ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL DECISIONS

INTEREST ARBITRATIONS VOLUME 5

1991 T/0029/91 - T/0092/91 (end)

ONTARIO PUBLIC SERVICE LABOUR RELATIONS TRIBUNAL

INTEREST ARBITRATION DECISIONS VOLUME 5

1991 T/0029/91 - T/0092/91

File No.	Re:	Chairman	Date
T/0029/91	Vehicle Inspection Administrator (Ministry of Transportation)	B. Keller	Sept. 16/92
T/0030/91	Vocational Rehabilitation Service Counsellors (Ministry of Community & Social Services)	K. Swan	July 6/92
T/0034/91-1	Employment Standards Auditors 1 (Ministry of Labour)	M. Watters	Oct. 15/92
T/0034/91-2	Employment Standards Auditors 1 (Ministry of Labour)	M. Watters	May 3/93
T/0035/91	Maintenance Operations Analyst (Ministry of Transportation)	H. Brown	Oct. 21/92
T/0037/91	Inspector of Signs and Building Permits 2 (Ministry of Transportation)	H. Brown	Jan. 28/93
T/0040/91	Gunsmith 1 & 2 (Ministry of the Solicitor General)	B. Keller	Jan. 27/93
T/0041/91	Geodetic Control Analyst (Ministry of Natural Resources)	S. Stewart	Nov. 18/92
T/0047/91	Real Estate Officers 1, 2 and 3 (Various Ministries)	B. Keller	Apr. 5/93
T/0048/91	Transportation Design Technician (Ministry of Transportation)	G. Charney	Apr. 28/93
T/0061/91	Case Worker, Homes for Special Care (Ministry of	B. Keller	Aug. 20/93

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File No.	Re:	Chairman	Date
	Health)		
T/0073/91	Farm Products Inspector 2 (Ministry of Agriculture & Food)	B. Keller	Aug. 24/93
T/0075/91	Mine Rescue Officer 1 & 2 (Ministry of Labour)	M. Saltman	Sept. 10/93
T/0080/91	Occupational Health and Safety Advisor (Ministry of Transportation)	M. Watters	Jan. 29/93
T/0091/91	Toronto Area Transit Operating Authority (GO Transit)	H. Brown	Dec. 31/92
T/0092/91	Utility Plant Electrician (Ministry of the Environment)	N. Dissanayake	May 18/93

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T/0029/91

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Vehicle Inspection Administrator)

Applicant

- and -

The Crown in Right of Ontario
(Ministry of Transportation)

Respondent

BEFORE:	B. Keller	Vice-Chairperson
	L. Robbins	Member
	V. Peperkorn	Member

FOR THE APPLICANT: L. Robinson
Ontario Public Service Employees Union

FOR THE RESPONDENT: K. Brown
Staff Relations Officer
Management Board of Cabinet

HEARING: May 19, 1992

DECISION

This arbitration concerns the setting of a salary range for the Vehicle Inspection Administrator class in accordance with Article 5.8 of the Collective Agreement.

The new class was approved by the Civil Service Commission on October 29, 1990. The parties were unsuccessful at setting the rate of pay at face-to-face negotiations and mediation. It was therefore referred to arbitration.

The Vehicle Inspection Administrator class standard was developed pursuant to a Memorandum of Settlement entered into by the parties to resolve a grievance filed by an employee on December 30, 1987 claiming improper classification as a Review Supervisor 2 (atypical). There are two such positions in the Operational Policy and Standards Office of the Compliance Award of the Ministry's Transportation Regulation and Operations Division. This arbitration concerns the incumbent of one of those positions.

The applicable class standard and position specification read as follows:

CLASS STANDARD

VEHICLE INSPECTION ADMINISTRATOR

INTRODUCTION:

Employees in positions covered by this class provide technical and administrative advice and expertise on the vehicle inspection programs and participate in the development of policy and regulatory recommendations specifically for the vehicle-mechanical and vehicle-safety related aspects of the Compliance program.

TYPICAL DUTIES:

Employees, under general supervision, are responsible for providing technical, policy and procedural advice to ministry officials, the transportation, automotive manufacturing, and automotive repair industries, and the general public to ensure the safe operation of vehicles, the safe highway transportation of people and goods, and to contribute to driver education and awareness by: developing internal policy papers, ministerial briefing notes, technical manuals, and providing input to Management Board Submissions, policy manuals and news releases: developing vehicle inspection programs and recommendations pertinent to the Compliance program: providing advice, guidance and interpretation of technical, administrative, and legislative matters pertinent to the Compliance program. They are also responsible for assessing compliance policies and practices, and for the evaluation of vehicle inspection standards and related legislation, regulations and policies by: attending various meetings, committees, conferences and seminars to explain Compliance program matters: developing, co-ordinating, and presenting training courses and materials on the Compliance program to ministry personnel, police officers, the transportation, automotive manufacturing and automotive repair industries, and staff of other government agencies.

Employees participate in the formulation of new or amended legislation, regulations and policies by: providing analysis and technical guidance to legal staff, recommending changes, and representing the Ministry and/or Branch at various forums. They are also responsible for preparing documents such as briefing notes, reports and correspondence for the Minister and Ministry officials, on a variety of transportation issues. Acting as provincial representative on international technical committees dealing with vehicle components and vehicle-safety, and as Ministry representative on provincial, technical and regulatory committees. They evaluate and make recommendations on submissions related to the Compliance program, under the employee incentive program.

SKILLS AND KNOWLEDGE:

Employees require demonstrated knowledge of provincial and federal legislation and regulations, ministry policies and procedures, and industry standards as they are related to the compliance program in head office and in the program delivery sphere, the motor vehicle repair trade, vehicle systems and components, and motor vehicles and trailers. Employees also require: skill in applying knowledge of the legislative and regulatory making process, the policy development process, provincial offenses procedures, and the workings of the judicial system pertinent to the Compliance program, oral and written communication skills sufficient to: liaise with all relevant parties; arrange, prepare and deliver technical training, educational activities and information seminars; provide Compliance program advice, information and assistance to Ministry and other enforcement agencies, other jurisdictions, industry, the judiciary and the public, a sound understanding of the motor vehicle repair trade, vehicle systems and components, and ability to operate micro computers using relational database, graphics and work processing software.

Possession of a certificate of qualification as a motor vehicle mechanic and a certificate of qualification as a propane vehicle inspector is required.

POSITION SPECIFICATION

VEHICLE INSPECTION ADMINISTRATOR

Purpose of position (why does this position exist?)

A. This position is a focal point for gathering and disseminating information regarding vehicle inspection issues across a broad spectrum of transportation activities and carries out an important coordinating function.

B. To design and prepare new or modified operational policy and project proposals related to complex transportation issues as required by new and amended Vehicle Inspection related legislation and regulations, and assist with implementation, training and awareness.

C. To monitor enforcement delivery uniformity on a province wide basis. Recommend changes to legislation and regulations and process such changes through the various committees.

D. Plan, develop and prepare operational procedures and directives, and assist management in the overall program delivery.

E. To provide technical expertise to the Transportation Regulation Development Branch in the development of new or amended legislation.

F. To answer public and industry enquiries regarding Vehicle Inspection Programs and prepare Ministerial letters for Ministers' signature.

G. To develop and deliver information programs for public, industry and field staff regarding new or amended Transportation Regulation Programs.

Duties and related tasks (what is employee required to do, how and why? Indicate percentage of time spent on each duty).

I Provides technical and administrative advice to ensure the safe operation of vehicles by:

1. developing and amending manuals, technical bulletins, directives and visual aids to assist field staff in administering programs locally; 25%

2. provides advise and guidance to Regional/District managers, senior staff, the transportation industry and the general public pertaining to technical innovations and administrative matters;

3. developing vehicle inspection programs to implement new legislation and changes in regulations;

4. developing recommendations to improve programs, administrative procedures and methods to ensure Ministry resources are being utilized efficiently;

5. developing and amending technical manuals and circulars for distribution to Motor Vehicle Inspection Stations and mechanics registered in the Appointed Station Program;

6. interpreting Ministry policy and procedures regarding vehicle inspection matters to officials of various governments, transportation industry, the legal profession and the judiciary.

II Ensure the uniform application of standards, Legislation/Regulations and Ministry policy by:

1. attending Ministry Regional and District meetings to present and explain legislation/regulations, operations, policies and documentation procedures to field enforcement staff and managers;

25%

2. developing, co-ordinating and presenting basic training and refresher courses at the Ontario Police College and the Ontario Provincial Police Academy to ensure uniformity of procedures by Vehicle inspection personnel;

3. developing and presenting training plans and materials at in-service courses or various vehicle inspection initiatives;

4. lecturing to a variety of safety associations, police officers and officials on the various vehicle inspection programs and initiatives;

5. participating on behalf of senior management in various safety-related and performance monitoring committees.

III Participating in the formulation of new or amended Legislation/Regulation and policy by:

1. analysing existing enforcement policies and procedures and recommending changes when necessary;

2. participating on various committees representing the Ministry/Branch leading to new or amended policies regarding vehicle inspection activities involving the Motor Vehicle Program and the overall condition of vehicles;

3. preparing initial draft of new regulations to ensure all enforcement issues are considered prior to finalization; 20%

4. provides technical guidance to the Office of Legal Services in official drafting of new/amended regulations/Legislation;

5. representing the Branch of Legislative Review Committee and Regulations Committee of Cabinet respecting new or amended regulations;

IV Preparing reports and correspondence, ensuring adherence to Ministry policy, Legislation/Regulations and safety procedures such as:

1. briefing notes and correspondence on behalf of Manager, Director, Deputy Minister and Minister related to a variety of highway transportation related issues;

10%

2. reports from studies and surveys to determine if legislation is feasible and providing information regarding the probable impact on the affected industry and vehicle operators;

3. correspondence for the signature of the Minister, Deputy Minister and senior staff to the general public, other jurisdictions and the transportation industry.

V Ensures the adherence to Ministry Policy, Legislation/Regulation and safety requirements by:

1. monitoring the use of safety equipment and other safety related issues on behalf of senior management;

10% 2. conducting field trips to monitor the consistency of enforcement principles, policies and practices covering both Federal and Provincial legislation;

3. monitoring and evaluating the programs to ensure procedures and results are within the established guidelines.

VI Other duties as assigned.

10%

Skills and knowledge required to perform job
at full working level (indicates mandatory credentials
or licences, if applicable)

Must be in possession of and maintain a valid Ontario Certificate of Qualification as a motor vehicle mechanic and an S.6 Certificate of Qualification as a propane vehicle inspector.

- A sound knowledge of the motor vehicle repair trade, vehicle systems and components gained through progressive experience in the automotive field, and several years progressively responsible experience within the Ministry enforcement program.
- A good knowledge of the legislation and regulation making process.
- A good knowledge of policy development steps and procedures.
- A good knowledge of motor vehicle safety inspection policy and procedures covering all types of motor vehicles and trailers.
- Ability to deal effectively with industry representatives.
- A working knowledge of the provincial offenses procedures and the workings of the judicial system.
- A good knowledge of the licensing policies and administrative procedures for Appointed Station Licensing within the Motor Vehicle Inspection Station Program.
- A thorough knowledge of the various Acts and Regulations both federal and provincial, that are utilized and enforced by the Compliance Branch and field delivery personnel.
- Ability to identify, analyze and evaluate operational problems and participate in the development of new and amended legislation in conjunction with other divisions of the Ministry, other Ministries, governments and private industry.
- A high level of administrative ability and communication skills are necessary to effectively liaise with field staff and assist the public sector regarding program policies and procedures.
- Sound knowledge of instructional techniques and demonstrated ability to develop, co-ordinate and present provincial training courses.
- An above average knowledge of the motor vehicle

repair trade, vehicle systems and components is mandatory.
- Sound judgement is needed when representing the Branch and/or Ministry at various meetings or committees regarding program operational policies.
- Must act in a responsible manner when representing Management at committees, meetings or hearings involving Union personnel.
- Sound judgement is required when supplying information and advice to the Senior Management and to other Government officials regarding highway transportation related issues.
- Good judgement is necessary when developing policies and procedures to ensure that initiatives may be implemented and function in an effective, efficient and economical manner.
- A great deal of tact and judgement is required in communicating Ministry policies, procedures and objectives to transportation industries, various levels of governments, other Ministries, politicians, field staff and senior staff of the Ministry.
- Initiative and discretion is required to evaluate and devise new and innovative approaches affecting transportation regulations and recommending action to senior staff when there are limited precedents for guidance.
- Judgement is required in reviewing operational methods, with considerable discretion to modify or amend as necessary.
- Judgement is required in interpreting and developing Ministry policy and procedures for the trucking, automotive and highway transportation industries.

The union submits that the old and the new class standards have little in common. It is argued that the essential difference between them relates to the core functions. Previously the main function was to make drivers drive more safely, the new standard is mainly concerned with ensuring that the vehicles being driven are safe.

It was further argued that the new class standard demonstrates the work is mainly technical and policy oriented with only a very minor administrative component. In the case of the previous class standard the work was shown to be essentially administrative with only a passing reference to policy.

The above submissions were accompanied by a point by point examination and comparison of the old and new class standard. On the basis of those comparisons the Board was invited to find that there has been a substantial upgrading.

As well as employing Vehicle Inspection Administrators, the Office also employs Highway Carrier Administrators. The position specifications of the two are almost identical, the main difference being a reference to vehicle inspection in one and highway carriers in the other.

The union also submitted an argument dealing with Vehicle Inspectors:

> "The two areas of responsibility in the Operational Policy and Standards Office corresponded to the two former class series covering the field inspection staff. One series was for Vehicle Inspectors, the other for Highway Carrier Inspectors. The former consisted of Inspectors 1 and 2, in which Inspector 2 was the working level; the latter consisted of Inspectors 1, 2 and 3, in which Inspector 3 was the working level. The class standards for these two series will be found in Exhibit 5.
>
> These two series were fused into a new series of Transportation Enforcement Officer 1, 2 and 3, issued on October 3, 1991, and made effective as of February 15, 1990. (see Exhibit 6) TEO 1 covers positions at an entry or developmental level, TEO 2 covers positions at the working level and TEO 3 covers positions at the senior level. The former as well as the new classifications are all in the Administrative Services category.
>
> The parties have negotiated wage rates for the new classifications."

In addition to the increase negotiated, virtually all former Vehicle Inspectors receive a salary allowance of $700 per year for having a Class A Motor Vehicle Repairer's Certificate of Qualification and a Propane Vehicle Inspector's Certificate of Qualification 56B. The grievor is also required to have those certificates but does not receive the allowance.

Finally, as part of its submission, the union made an internal comparison argument with two positions - Fire Service Advisor 1 and Safety Policy Officer. With regard to the former position, the union acknowledges that the comparison is less than satisfactory on a factor-by-factor basis but argued that the positions should be judged to be equal in terms of their value.

With regard to the Safety Policy Officer, the union submit that the Vehicle Inspection Administrator and Safety Policy Officer do much the same work and their work can be judged of equal value.

The employer argues that a comparison of the old and new class standard demonstrates that there has not been sufficient change to warrant any increase to the existing wage grid. It does, however, agree that the $700 annual allowance referred to above is warranted.

The employer also argues that an increase to the salary grid would reduce a historical relationship between the rate of pay of this position and that of the Head, Enforcement Policy Administration which has remained at 15.1% since January 1987.

This Board, after reviewing the submissions of the parties and, in particular the class standard, concludes that the new class standard is, generally, stronger than the old one. Accordingly an increase to the wage grid is warranted.

On the basis of the evidence, we conclude that the closest basis of comparison is the Safety Policy Officer and accordingly order an increase to the wage grid, effective October 1990, of 6.3% at the minimum, 7.2% at the next step, 8.6% at the next two steps and 9.1% at the maximum.

To the above amounts are to be added the $700 annual salary allowance. For purposes of clarity, this is to be paid as a salary note in accordance with the employer's usual practice and is not to be folded into the wage grid.

We remain seized to deal with any issues arising from this decision.

Nepean, this 16 day of September, 1992.

M.B. Keller, Chair

I Concur

V. Peperkorn, Employer Nominee

I Concur

L. Robbins, Union Nominee

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T/0030/91

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Vocational Rehabilitation Service Counsellors)

Applicant

- and -

The Crown in Right of Ontario
(Ministry of Community & Social Services)

Respondent

BEFORE:	K. Swan	Vice-Chairperson
	L. Robbins	Member
	F. Collict	Member

FOR THE APPLICANT:
J. Miko
Job Evaluation Officer
Ontario Public Service Employees Union

FOR THE RESPONDENT:
K. Brown
Staff Relations Officer
Management Board of Cabinet

HEARING: November 25, 1991

AWARD

A hearing in this matter was held in Burlington, Ontario on November 25, 1991, and the parties were agreed that the board of arbitration had been properly appointed, and that we had jurisdiction to hear and determine the matter at issue between them. That matter is a submission pursuant to clause 5.8.1 of the collective agreement in relation to the classification of Vocational Rehabilitation Services ("V.R.S.") Counsellor employed by the Ministry of Community and Social Services.

The provision of the collective agreement under which our jurisdiction arises is as follows:

> When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties may meet within thirty (30) days to negotiate the salary range with a new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the newer revised classification subject to the right of the parties to have the rate determined by arbitration.

There are approximately 140 individuals in the classification. Virtually all of them are full-time employees. The positions were originally in the Social Worker 2 classification, and the duties assigned to them were considered to be duties properly within that classification. Beginning in 1986, however, a substantial number of grievances were filed by employees assigned those duties to the effect that they were wrongly classified and, consequently, inadequately paid for the vocational rehabilitation duties assigned.

A substantial number of these grievances came before the

Grievance Settlement Board in Re O.P.S.E.U. (Tomassoni et al.) and The Crown in Right of Ontario (Ministry of Community and Social Services), 807/86 et al., December 19, 1989 (Verity).

While we shall make further reference to the Grievance Settlement Board's decision, the essence of it is found in the following excerpt:

> The first issue is whether or not the representative Grievor is currently misclassified. In that regard, the Board's job is to assess the Grievor's actual duties and responsibilities against the relevant class standard. The Union acknowledges that the counselling component of the position is described in the Grievor's job. However, the Board is satisfied that the Grievor performs certain administrative responsibilities in the delivery of the Ontario Vocational Rehabilitation Services Program that are not contemplated by the Social Worker 2 class standard.
>
> On the evidence adduced, the Board finds that the Grievor determines "eligibility" for services and, if applicable, the "amount or nature" of those services pursuant to the Vocational Rehabilitation Services Act and regulations and the Ministry's Policy Manual. Under S. 8 of the Act, the "Director" has the statutory mandate to determine both the eligibility of the each applicant and the level of services to be provided. For obvious practical reasons, those duties have been given to Vocational Rehabilitation Counsellors.
>
> Vocational Rehabilitation Counsellors have direct authority to authorize the expenditures of limited sums of money for certain specified program objectives. The Selection Committee approves all training expenditures and other matters on the basis of consensus. Accordingly, we find that the Grievor has the effective, if not the actual authority, over the expenditure of program monies. It must be said that the Grievor's administrative role is significant. Accordingly, we find that the Grievor's administrative duties are beyond those of a typical Social Worker as contemplated by the current class standard. Admittedly, the preamble of the series refers to "positions which involve the provision of professional social work services in provincial programs." There is, however, a difference between involvement in a provincial program and the partial

administration of such a program.

As indicated previously, the Social Worker 2 class standard has not been reviewed since July 1971. While we would agree that class standards should be revised infrequently, they must be subject to periodic revision in order to reflect the current state of the art. For all of the foregoing reasons, we conclude that the Grievor is misclassified as a Social Worker 2.

However, the Board is not persuaded that the Grievor performs work which can be characterized as "substantially the same" or "substantially similar" to the position of Employee Counsellors.

Mr. Wells candidly acknowledged that the Grievor does not perform management consulting services which constitute 10% of the Employee Counsellor's job. The Board agrees with Mr. Patterson's contention that a 10% difference in jobs does not demonstrate substantial similarity. In our opinion, there are significant differences between the two positions. To illustrate a few of those differences - Employee Counsellors are required to be familiar with the Collective Agreement in serving members of the Ontario Public Service; Employee Counsellors are required to work with insurance carrier personnel on a frequent basis and to understand the nuances of insurance policies; Employee Counsellors are required to have detailed knowledge of the various personnel practices employed by each Ministry and to negotiate with management on such issues as the return of L.T.I.P. employees; and Employee Counsellors do not determine eligibility nor do they administer the expenditure of funds. In addition, as we understand, Employee Counsellors need not be qualified social workers. In the result, the Grievor has failed to persuade us as to the merits of the parallel classification claimed.

However, the remedy on a finding of improper classification is proper classification. Following the judgement of Mr. Justice Reid in The Judicial Review of OPSEU (Carol Berry et al) and Ministry of Community and Social Services, 217/83, the Board's remedial mandate is "to effect a proper classification". The exclusive authority to classify employees remains with the Employer. However, in the exercise of our remedial authority, the Board orders the Employer to find or create an appropriate classification in this matter within six months of the release of this decision.

It may well be that the Social Worker 2 class

> standard is deemed appropriate with certain modifications to reflect the Grievor's actual duties and responsibilities. Alternatively, the Employer may choose to create a new class standard.
>
> Following the resolution of the classification issue, the Grievor shall be entitled to receive full retroactive compensation, if any, together with interest on such retroactivity, subject to the 20 day rule prior to the filing of the Grievance. The Board shall remain seized in the event of any difficulty encountered in the implementation of this decision.

The Employer decided to exercise the option offered by the Grievance Settlement Board by creating a new class standard for a new class of Vocational Rehabilitation Services Counsellor. The new class standard is attached as Appendix A to this decision, and reference will be made to it in dealing with this matter. We should observe, however, that a direct comparison of the new class standard with the class standard previously existing for the Social Worker 2 class is not a simple task, primarily because the Social Worker 2 class standard was last revised on July 4, 1971, and the passage of nearly two decades has made a significant difference in both the detail and the format used by the Employer in constructing class standards. For ease of reference, however, the preamble and class standard for the Social Worker 2 class is also attached to this decision as Appendix B.

Briefly, the Union's submission was that we should decide this matter on the basis of: a comparison between the language of the old and new class standards; a comparison of the position specification for the V.R.S. Counsellor as submitted to the Grievance Settlement Board with the new class standard; and a comparison of the duties of this classification with two non-bargaining unit positions and one bargaining unit position, all of which are asserted to be relevant to the job under consideration.

While we have carefully considered the Union's submissions, we do not find them particularly helpful in resolving the dispute before us. Two of the three positions are the classifications of Employee Counsellor and Social Work Supervisor 1 in the Public Service of Ontario. These are positions with a superficial similarity in some aspects to the bargaining unit position, but they differ very substantially in overall emphasis. The critical difference for the Employee Counsellor is that the clientele for that position is composed of other Crown employees. While the position has a substantial counselling element, it is also a significant part of the Employer's human resources structure. We observe that the Grievance Settlement Board was not persuaded that this classification was relevant to the classification now before us.

As to the Social Work Supervisor 1, while in the bargaining unit, that position is largely supervisory in nature, and it also thus involves very different duties, although aspects of the skill and knowledge required for someone to supervise social workers will obviously be similar to employees in the present class, which is evolved from the Social Worker class.

The third position advanced is that of Employee Assistance Counsellor in the Civil Service of the City of Toronto. That position is also concerned with counselling services provided to employees of the City, and not to other clients. This position also incorporates human resources elements which, along with the fact that very different collective bargaining regimes apply, makes reliance upon this position questionable.

As to the comparison between the new class standard and the old class standard, or the position specification as set out in the Grievance Settlement Board's award, this is really a question of interpretation of the documents. The Union argues that the new class standard creates a position with even more complex duties and responsibilities than the position on which the Grievance Settlement Board's decision was based. With respect, we do not think that this is correct. We have reviewed carefully the language changes between the old and the new class standard, and we are of the view that the new class standard in this case does not either intend or achieve a significant increase in the job duties beyond those which were proved before the Grievance Settlement Board.

What that means, therefore, is that the amount of the appropriate increase in remuneration to this class over the Social Worker 2 class must be based essentially on the findings of the Grievance Settlement Board as set out above. That determination was that "counselling is the core function" of the Vocational Rehabilitation Services Counsellor, but that there were "certain administrative responsibilities in the delivery of the Ontario Vocational Rehabilitation Service Program that are not contemplated" by the class standard applicable to Social Worker 2.

Moreover, the evidence before the Grievance Settlement Board was to the effect that up to 85% of the job involves counselling, so that these extra duties could only constitute a small proportion of the job. In such circumstances, it would be inappropriate for us to award an increase in remuneration that ignored the fact that a relatively small proportion of the time of members of this class is spent on the duties which are said to be of a higher value.

In the result, we think that all of the evidence before us would justify a 6% differential over the Social Worker 2 classification. While we have taken most of the Employer's arguments into account in coming to this conclusion, we think we should observe that we have taken the view that increases to the Social Worker classification based upon the additional increases provided to the Social Worker class in previous bargaining rounds, and the impact of the Ontario Public Service Pay Equity Plan, are irrelevant to a consideration of the appropriate differential between the pay for the Social Worker class and the V.R.S. Counsellor class.

Finally, we have rejected the Union's proposal that we should change the number of annual steps in the salary grid for the classification. There is no evidence to justify such a step in this case.

In the result, therefore, our award is that the salary range for the V.R.S. Counsellor should be based upon a 6% differential above the salary range for the Social Worker 2 classification. We were informed that the parties would be able to work out between them the actual dollar figures, and the retroactivity amounts payable under the Grievance Settlement Board's award. On that basis, therefore, we remit those calculations to the parties, remaining seized in case they encounter any difficulties in completing this award.

DATED AT TORONTO, this 6th day of July, 1992.

Kenneth P. Swan, Chairman

I concur; see attached — "Fred Collict"
Fred Collict, Employer Nominee

I dissent; see attached — "Larry Robbins"
Larry Robbins, Union Nominee

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CLASS STANDARDS

APPENDIX A

Category Scientific and Professional	Group SP-11 Social Development
Series Vocational Rehabilitation Services Counsellor	Class Code

VOCATIONAL REHABILITATION SERVICES COUNSELLOR, MCSS

This class covers positions of employees who administer vocational rehabilitation services in accordance with provincial legislation to rehabilitate clients with disabilities to their optimum vocational capacity. These clients are incapable of pursuing and maintaining substantially gainful employment due to a wide variety of disabilities such as physical or psychiatric conditions, addictions, learning disabilities, developmental and multiple handicaps. Employees in these positions are involved in all aspects of the vocational rehabilitation process, utilizing their professional skills to provide vocational counselling and to access and develop resources in the community. In addition, they determine the most appropriate and cost-effective approaches for assessment, training programs and supplementary services and aids, providing all services within the meaning and intent of the Act.

Characteristic Duties

Employees in these positions conduct comprehensive psycho-social, functional and vocational assessments, referring to medical specialists and other professionals for expert opinions in their field, as necessary. They determine eligibility and the feasibility of vocational rehabilitation services, identify options and create developmental plans and vocational goals in conjunction with clients. They provide on-going counselling utilizing a variety of models and approaches to assist clients to accept their disability and identify their strengths, to define vocational goals, to learn coping techniques to integrate into society. They practise crisis intervention techniques to resolve personal crises and may refer to other specialists for in-depth individual, marital and financial counselling, obtain support or funding to alleviate other problem areas in their lives, such as social assistance, support groups, emergency shelter, child care, legal aid.

They provide a large variety of purchased services to assist in clients' rehabilitation, such as funding for educational and vocational training, work assessments, pre-vocational assessments, modification of vehicles and the physical environment, the purchase of assistive devices, attendant care, transportation and travel expenses, books and supplies, tools and equipment. They authorize pre-established dollar amounts for the purchase of assessment, restoration and job placement services. They negotiate funding resources on behalf of their clients from other federal, provincial and municipal programs, from service organizations, employers and insurance companies.

Category Scientific and Professional	Group SP-11 Social Development
Series Vocational Rehabilitation Services Counsellor	Class Code

Employees in this class provide job placement services when clients are job-ready by assisting with resume writing and interview skills, advocating with employers, implementing employer incentives such as wage subsidies, purchase of adapted equipment, modification of work sites and providing follow-up support. Where they are able to refer to a job placement officer or services, employees continue to be involved in the job placement plan.

Employees in this class also engage in a variety of community development activities as members of inter-agency groups to develop needed services in the community. They act as liaison to some agencies to streamline the referral process, providing consultation regarding community resources, training staff in making appropriate referrals. They attend agency meetings and may be involved in program development activities. They advocate for persons with disabilities in a variety of settings and make presentations to interest groups and referral sources. They contribute to program development at community colleges to promote the availability of appropriate training for clients.

They also act as consultants in a variety of contexts, such as to the Medical Advisory Board of the ministry regarding eligibility for disability pensions by assessing clients and making recommendations regarding the impact of disabilities on earning potential; to insurance companies by preparing summary reports regarding functional loss, current and future needs and projected costs; to the courts by providing vocational information to the courts and acting as expert witness, when requested.

They assist in the management of the program by participating in orientation and on-the job training of new staff and may provide supervision to students in social service programs up to the masters level. They respond to inquiries from agencies, advocacy groups, MPP's offices and the public on issues related to the program. They serve on ministry planning committees and make recommendations to management on policy development issues.

Category	Group
Scientific and Professional	SP-11 Social Development

Series	Class Code
Vocational Rehabilitation Services Counsellor	

Knowledge

The performance of this work requires: broad knowledge of social work and rehabilitation principles, theories and techniques, such as learning, personality and behavioural theories, counselling and interactive models, social policy and community development theory acquired through a masters degree in social work or equivalent qualification; the ability to apply this knowledge in a vocational rehabilitation setting to a range of activities, such as counselling, psycho-social assessment, crisis intervention and community development; thorough knowledge of and the ability to interpret vocational rehabilitation legislation, related policies and guidelines and ministry programs and objectives; working knowledge of the provisions of a wide range of related social and labour legislation and federal and provincial government programs providing funding and services; knowledge of the provisions of freedom of information legislation; comprehensive knowledge of a broad spectrum of education programs, community resources, the business and industrial community and voluntary organizations; comprehensive knowledge of various physical and emotional disabilities, prognoses, the extent and impact of functional loss, their vocational implications, implications for home modification; knowledge of diagnostic and treatment procedures used by related disciplines; knowledge of assistive devices, including computer technology, restoration options and home modifications to select the most suitable options and knowledge of municipal by-laws, fire regulations, the functions and abilities of architects, contractors and inspectors; analytical skills to interpret the intent of vocational rehabilitation legislation and related policies, to interpret and evaluate information collected during the assessment process and make sound decisions and recommendations regarding vocational plans and funding; negotiating skills and communication skills to access alternate resources and interact effectively with individuals and groups in a wide variety of situations, to write reports, to advocate effectively for clients; ability to research disabilities, treatment, equipment, including high technology equipment and structural modifications and to keep abreast of new developments in their community, in labour market trends, in job content and in the vocational rehabilitation field.

Judgement

Work is carried out independently guided by the vocational rehabilitation services legislation, related policies and guidelines and by performance expectations and work plans. Employees consult their supervisors and colleagues for advice in resolving difficult problems. Work is assessed through review in the funding approval process and periodic case review.

Category	Group
Scientific and Professional	SP-11 Social Development

Series	Class Code
Vocational Rehabilitation Services Counsellor	

Judgement is exercised in determining eligibility and feasibility; in collecting information from clients and determining appropriate referrals for services; in interpreting, analyzing and evaluating information collected to establish support needs and priorities, identify the best approach to accomplish goals; in counselling clients; in ensuring that sufficient supports are in place to maximize success without building dependencies; in investigating the options and costs for services contemplated in the vocational plan by site visits, by obtaining estimates for restoration or equipment, by collaborating with architects and contractors; in selecting options that meet clients' needs as cost-effectively as possible; in resolving issues relating to clients with other interest groups, significant others; in the on-going re-assessment of progress and modifications to the vocational plan; in negotiating funding and services from other sources, such as other government programs and community agencies; in advocating for clients and engaging in activities to develop community resources to fill service gaps.

Accountability

Employees in these positions are accountable for the provision of services within the intent of the legislation and related guidelines: to ensure that clients are eligible and that vocational rehabilitation is feasible initially and on-going; to investigate alternate funding sources, for restoration and modification; to ensure that purchased services for assessment, training and restoration meets clients' needs cost-effectively; to document the rationale for expenditures for the approval of the designated authority and justify decisions if appealed; to monitor the value, utility and safety to the client of purchased services and to discontinue or suspend unsatisfactory services; to assist clients to meet vocational goals through on-going counselling; to promote the development of needed resources in the community and act as an effective liaison; for managing a caseload in a timely fashion, organizing to meet conflicting priorities, maintaining case notes to document progress,maintaining statistics and preparing a large number of reports and training plans; to ensure that clients are aware of their rights, including the right of appeal if services are denied or discontinued, that release of information forms are signed.

Impact of Errors

Errors in judgement in the counselling process can result in damage to clients' emotional and physical well-being and stability. Inappropriate assessments, poor vocational rehabilitation plans and restoration choices can result in clients' premature withdrawal, inability to complete the program, wasted dollars and resources, health and safety risks, legal liability and unnecessary appeals. Poor liaison and community development activities can result in agency complaints, a poor image of the program and embarrassment to the ministry. Failure to comply with the legislation would result in a poor program and ministry profile with agency networks, client target groups and the employment sector.

Effective Date	Issued	Page
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Soc

APPENDIX B

CLASS STANDARD: 10102-04

PREAMBLE

SOCIAL WORKER SERIES

This class series covers positions in the field of social welfare which involve the provision of professional social work services in provincial programs of social development, adjustment, prevention and rehabilitation. These direct services assist individuals, families, groups, and communities to achieve and maintain effective personal development and social functioning, satisfying inter-relationships and a better social order. Employees use one or more social work methods to assess, treat or prevent the underlying causes of social dysfunctioning, both personal and environmental. They develop and implement appropriate social treatment plans and evaluate results. Social work services are given in a variety of community and institutional settings.

SOCIAL WORKER SERIES

SOCIAL WORKER 1:

The entry level for recruits with minimum qualifications and no experience.

SOCIAL WORKER 2:

The full working level for qualified social workers.

July 4, 1971

10104

CLASS STANDARD:

SOCIAL WORKER 2

This class covers the positions of qualified social workers who provide professional social work services to clients under the general supervision of a senior social worker or other professional or administrative official. They conduct interviews, compile social histories and formulate psychosocial diagnosis of the personal and environmental causes of social dysfunctioning. They implement treatment plans to assist clients to resolve their problems and develop their maximum potential. They provide service by any one or a combination of the social work methods appropriate to the functions of the department and service. They evaluate the effectiveness of the treatment plan and modify or revise as necessary. They consult with members of other professional disciplines and may serve as members of treatment teams, institutional and community committees. They may supervise and review the work of social work assistants, child care workers, residential counsellors and other staff in the area. They participate in conferences and group discussions, interpret departmental policy and objectives, and maintain liaison with other disciplines, jurisdictions, and community agencies. They may assist in the training of departmental personnel and students in social service courses.

KNOWLEDGE AND SKILLS REQUIRED:

Thorough knowledge of the principles, techniques, and methods of social work and ability to apply them in the work situation; ability to formulate psychosocial diagnoses and skill in implementing them; knowledge of diagnostic and treatment procedures utilized by related disciplines; good knowledge of departmental programs and policies; ability to develop co-operative working relationships with other professional staff; personal suitability.

Revised, July 4, 1971.

ADDENDUM

5.8 INTEREST ARBITRATION

RE: VOCATIONAL REHABILITATION SERVICES COUNSELLORS

T/30/91

This Member is in concurrence with the award in this case.

The essence of the earlier award that resulted in this 5.8 interest arbitration (GSB #807/86, etc - TOMASSONI et al) was that certain administrative responsibilities concerning "eligibility" and "amount and nature" of services pursuant to the Vocational Rehabilitation Services Act are not included in the Social Worker 2 class standard. The issue before this interest board, therefore, was the question as to what value should be placed upon the "additional administrative duties."

The expense limits on these additional duties were as follows:

a)	Assessment	-	$2,000
b)	Restoration	-	$2,500
c)	Job Placement	-	$ 500

During 1986/87, the evidence of Ms Tomassoni (GSB #807/86 et al) was that she spent $74,266 for 50 to 60 clients, at an average of $1,350 (approximately) per client.

At Page 17 of the GSB #807/86 et al award, Vice-chair Verity stated that Ms Tomassoni engaged in

> "...... partial administration of such a program."
> (underscoring added)

In effect, Mr. Verity recognized that the Vocational Rehabilitation Services Counsellor performed the administrative duties to a limited and controlled degree.

When one compares the VRSC class standard with positions through a wide range of classifications within the Ontario Public Service which are compensated at approximately the same level, it is clear that there are many which carry comparable "administrative duties" and which require the assessment of "eligibility" and "amount and nature" of government services and programs to be provided.

In the view of this Member, a conclusion appropriate to the GSB #807/86 et al award, would have been no more than a minimal one step increase in the Social Worker 2 Class standard (approximately - 3%).

Notwithstanding the above, this Member is in concurrence with the subject award.

F. T. Collict

F.T. Collict

June 23, 1992.

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE CROWN IN RIGHT OF ONTARIO
(MINISTRY OF COMMUNITY & SOCIAL SERVICES)
(the "Employer")

AND

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(the "Union")

DISSENT

I am unable to concur with the Chairperson's decision in this matter. The Verity Board found that there was a significant administrative component to this position which was not reflected in the old Class Standard. As a result, a new Class Standard has been created, which we are required to evaluate.

The Award leaves the impression that these additional administrative functions are extra duties which constitute only a small proportion of the job. The Award at Page 7 states that 85% of the job still involves counselling, and that on that basis the differences are not that significant.

In my view, this misconstrues the nature of these functions. It is true that 85% of the job involves assessment and counselling. In fact, the Position Description assigns 40% to assessment and 45% to counselling. The additional functions which are worth more money in fact flow out of the assessment and counselling functions of the position.

The Vocational Rehabilitation Counsellors play a key administrative role in the programme, determine eligibility for services, and commit the Employer to the expenditure of funds. They function as the "Gatekeepers" into the system. An examination of the Position Description makes it clear that that role is built in to the primary functions of Assessment and Counselling.

In my view, the act of partially administering the relevant programme justified a larger adjustment than 6%, which is certainly at the lower end. I would have awarded an adjustment of 12%, to give proper recognition to the accountability of this position.

DATED AT TORONTO, this 2nd day of July, 1992.

Larry Robbins
Union Nominee

T/0034/91-1

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T/0034/91

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Employment Standards Auditors 1)

Applicant

- and -

The Crown in Right of Ontario
(Ministry of Labour)

Respondent

BEFORE:	M. Watters	Vice-Chairperson
	S. Nicholson	Member
	F. Collict	Member

FOR THE APPLICANT: L. Robinson
Ontario Public Service Employees Union

FOR THE RESPONDENT: B. Doherty
Staff Relations Officer
Management Board of Cabinet

HEARING: March 27, 1992
June 22, 1992

By decision dated August 28, 1990, a panel of the Grievance Settlement Board chaired by Mr. T. Wilson found that two (2) grievors were improperly classified at the level of Employment Standards Auditor 1. The Employer was consequently ordered to properly classify the grievors. In coming to its decision, the Board determined that the class standards, while of recent vintage, did not reflect the complexity of some of the matters handled or the extent of knowledge required. It was noted that both of these items were compensable and fit within the core duties of the grievors.

Subsequent to the release of the above-mentioned decision, the parties were able to negotiate a new class standard for Employment Standards Auditor 1. The class standard became effective as of October, 1990. No changes were negotiated for the higher Employment Standards Auditor 2 classification within the same series. There are approximately thirty (30) individuals classified as Employment Standards Auditors 1. This total is comprised of twenty-one (21) women and nine (9) men. Despite agreement on the class standard, the parties were unable to reach a consensus on the wage rate that should apply thereto. That matter was, therefore, bestowed on this Board pursuant to article 5.8.1 of the collective agreement. That provision reads:

> When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no

> agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration.

The new class standard describes the work of the Employment Standards Auditor 1 in the following terms:

> "
>
> Employees in positions at this level are responsible for a heavy duty volume of claims intake and public information. They investigate and resolve claims, by telephone, letter and in-office visits and handle a full range of claims from the routine to the complex. However, they are not required to do personal investigations on employers' premises ....
>
> ....
>
> ....
>
> This class covers positions of employees who respond to claims at the intake level and provide information in support of the employment standards program. Responsibilities are directed to the administration of and voluntary compliance with legislation. They operate primarily from a Ministry office, dealing with the parties by phone, mail and in-person on a caseload which ranges from routine to complex, where the auditors effect a mutually agreeable settlement.
>
> These employees respond to a heavy volume of telephone, letter and in-person enquiries and complaints concerning Employment Standards and related legislation, re-directing unrelated matters to the appropriate provincial or federal agencies. They investigate complaints of alleged violations of the Employment Standards Act by interviewing claimants and reviewing and verifying all pertinent documentation which may include personnel, payroll, financial corporate records, etc., and prepare reports of findings and conclusions. They explain the legislative provisions which relate to the claimed violations and contact employers by telephone, in order to obtain and/or verify information. They attempt to resolve complaints and/or arrange for payment of wage arrears, referring unresolved or priority cases for assignment to an Employment Standards Auditor 2 for on-site investigation or enforcement.
>
> These employees also may engage in public speaking to explain Employment Standards legislation to the public."

Both parties spent considerable time at the hearing, and in their respective briefs, comparing the old and new class standards in terms of the description of position; characteristic duties; skills and knowledge required; and judgment and accountability. Briefly stated, it was the Union's position that the new class standard responded to the deficiencies identified by the Grievance Settlement Board. From its perspective, the "range of the Employment Standards Auditor 1's duties has been extended upward to reflect the work which they actually do. The Skills and Knowledge required are more exacting, judgment must be exercised over the wider range of duties and responsibilities, and the consequence of errors and delays may be more serious." For these reasons, the Union asked for a corresponding increase in pay. In response, the Employer acknowledged that some change had occurred to the class standards. The degree of change, however, was described as slight. It was the Employer's submission, simply put, that the revision did not involve a substantial change in the value of the work. We were urged to conclude that the changes simply served as clarification of the former standard. Accordingly, it was the Employer's position that the wage rates should not be augmented. In any event, the Employer representative asserted that special case and pay equity increases received by the Employment Standards Auditors 1, of which more is said below, more than compensated for the "slight increases in strength" shown in the revised standard.

The Board has considered these competing positions. On our reading of Mr. Wilson's award, the Grievance Settlement Board found that the former class standard did not adequately encompass the work performed by the grievors in respect of two (2) compensable items, namely, complexity of the required duties and extent of knowledge demanded to competently perform same. We agree with the Union's assertion that these deficiencies have been corrected by the language of the new standard. Similarly, we accept that the amendments reflect a significant, rather than slight, evolution of the job of an Employment Standards Auditor 1. It is this Board's judgment that the change has increased the value of their work. Ultimately, we think the real issue before us is the quantum of the adjustment that should be made to the wage rates. In this regard, the Board accepts the thrust of the Employer's argument that such adjustment should be calculated according to the value of the changes to the work as set out in the new class standards.

The Union argued that the Board should be influenced by the wage rates paid to Human Rights Officers 1 and to Workers' Compensation Advisers 1. These classifications were compared, at some length, to that of Employment Standards Auditor 1. With respect to the former, the Union submitted that whenever there were differences, less was required of a Human Rights Officer 1 than of an Employment Standards Auditor 1. The data filed disclosed that the former classification was the higher paid of the two (2) up until 1991. As of that year, the wage rates for Employment Standards Auditor 1 exceeded those of Human Rights Officer 1 by 3.7% at the minimum and by 1.6% at the maximum. This change in the historical relationship was occasioned by the special case and pay equity increases granted to the Employment Standards Auditors 1. If those increases were deducted from the rates, the Human Rights Officers would remain between 7% and 8% ahead of the Auditors 1 vis a vis their wage rates. With respect to the Workers' Compensation Advisor 1 classification, it was the Union's submission that "the positions are in most respects equal but that, where there are differences, the balance tilts in favour of the Employment Standards Auditor 1". The Union representative, therefore, argued that the rates of pay should be the same. He noted, however, that there is a wide discrepancy in the wage rates applicable to the two (2) classifications. As of 1990, the minimum and maximum wage rates differed by 28% and 26.1%, respectively, in favour of the Workers' Compensation Advisor 1. These figures diminished to 17.8% and 17.2% for 1991 largely as a consequence of the pay equity increase granted to the Employment Standards Auditors 1. It was the Union's position that this large gap in wage rates justified a substantial award in the instant case. In response, it was submitted by the Employer that the Human Rights Officer 1 comparator did not compel a wage increase as the two (2) positions were "equal". It was also argued that the Workers' Compensation Advisor 1 classification was an inappropriate comparator as those in the position advise and represent parties to disputes rather than enforce legislation.

This Board has spent considerable time assessing the similarities and differences between the three (3) classifications referred to above. In the final analysis, we have concluded that our award should be premised on a comparison between the Employment Standards Auditors 1 and 2. In our judgment, the latter level constitutes a more appropriate benchmark from which to assess the extent of the increase which should be awarded to the Employment Standards Auditors 1.

The Employment Standards Auditor series consists of two (2) levels, these being Employment Standards Auditors 1 and Employment Standards Auditors 2. The work of the latter level is described in the class standards as follows:

> "
>
> Employees in positions at this level perform employment standards legislation administration and enforcement work, primarily through claim investigation; they are required to bring claims to resolution.
>
> This level also includes positions which provide certain advisory and administrative services related to legislation enforcement.
>
> ....
>
> Employees in these positions investigate complaints of alleged violations of Employment Standards related legislation; these reviews are usually conducted on the employers' premises and typically include examinations of personnel, payroll, financial, corporate and related records, interview of employers, employees of the firms being investigated and other parties who may have relevant information. At the conclusion of the reviews, they prepare reports of their findings and conclusions.

> Based on such reviews, these employees determine whether the subject employers are in compliance with the legislation and, if not, what actions should then be taken; for example, an auditor may issue an order to an employer to pay the wage arrears, to reinstate an employee, or to pay compensation to an employee. An auditor may also conduct negotiations between the parties to effect a settlement which may include wage arrears, reinstatement or compensation and/or recommend prosecution or other action to more senior branch officials. He/she is required to explain own decisions and/or recommendations to the parties concerned, to prepare files for appeal hearings, to appear at such hearings as a witness and, on occasion, may present cases at hearings; testifying in court may also be required. These employees also speak at seminar and discussion sessions involving employer and employee groups and associations, to explain the legislation and encourage voluntary compliance. "

It is clear to the Board that there are significant differences between the job of an Employment Standards Auditor 1 and that of an Auditor 2. Briefly stated, employees at the higher level are substantially more involved in the enforcement process. As noted, they possess the authority to issue mandatory orders. This contrasts with the authority of employees at the lower level who may only work towards obtaining voluntary compliance. Additionally, the Employment Standards Auditor 2 conducts reviews and investigations off-site at locations such as an employer's premises. The Employment Standards Auditor 1 performs his/her work in the office vis a vis walk-in, telephone or letter contacts. After reviewing the evidence, the Board agrees with the Employer that there is a significant difference in the degree and type of responsibility exercised by employees at the two (2) levels.

The salary rates for Employment Standards Auditors 1 and 2 consist of a start rate plus five (5) annual increments. A substantial amount of evidence and argument was presented with respect to the history of these rates. A summary of the rates is as follows:

1987	Minimum	Maximum
Employment Standards Auditor 1	$465.60	$537.63
Employment Standards Auditor 2	$610.30	$719.59
% Difference	31.1	33.8

1988	Maximum
Employment Standards Auditor 1	$564.04
Employment Standards Auditor 2	$753.32
% Difference	33.6

1989	Minimum	Maximum
Employment Standards Auditor 1	$533.47	$615.18
Employment Standards Auditor 2	$755.87	$890.22
% Difference	41.7	44.7

1990	Minimum	Maximum
Employment Standards Auditor 1	$587.88	$676.12
Employment Standards Auditor 2	$804.25	$947.19
% Difference	36.8	40.1

1991	Minimum	Maximum
Employment Standards Auditor 1	$676.05	$769.41
Employment Standards Auditor 2	$850.89	$1002.13
% Difference	25.9	30.2

The above rates are the result of a number of developments which may be summarized in the following fashion:

(i) On January 1, 1989, the Employment Standards Auditors 1 received the general wage increase for the Administrative Services category of 5.89% plus a special case increase of 3.0%.

(ii) On December 31, 1989, the Employment Standards Auditors 1 received a pay equity increase of $10.88 a week. This first installment of the pay equity increase was equal to 2.0% at the minimum and 1.8% at the maximum.

(iii) On January 1, 1990, the Employment Standards Auditors 1 received the 6.4% general increase for the Administrative Services category plus a special case increase of 1.5%.

(iv) On December 31, 1990, the Employment Standards Auditors 1 received a second pay equity increase of $55.11 per week. This was equal to 8.7% at the minimum and 7.6% at the maximum.

(v) On January 1, 1991, all classifications in the Administrative Services category received a general increase of 5.8%.

(vi) As a consequence of a settlement between the parties in October, 1991, the rates of Employment Standards Auditors 2 were increased by 11.6% for all hours worked retroactive to June 1, 1989. But for this development, the percentage difference at the minimum for 1989, 1990 and 1991 would have been 27%, 22.6% and 12.8%, respectively. The comparable figures at the maximum would have been 29.7%, 25.5% and 16.7%. The aforementioned settlement followed classification grievances lodged by Employment Standards Auditors 2 in 1989.

It was the position of the Union that the gap between the two (2) levels of the series is too wide. Its representative proposed that the difference be reduced by one-half in both 1990 and 1991. For 1990, this would lead to a weekly range of $696.07 at the minimum to $811.65 at the maximum. This would represent an increase of 18.4% at the minimum and 20% at the maximum. For 1991, the Union's proposal would result in a wage rate of $763.47 per week at the minimum to $885.77 at the maximum. This would represent percentage increases of 12.9% and 15.1%, respectively. Alternatively, the Union suggested that the Employment Standards Auditors 1 receive 11.6% for 1991, this being the same increase awarded to employees working at the higher level. The resulting weekly rates would be $754.57 at the minimum and $856.43 at the maximum.

In response, as stated previously, it was the Employer's position that there should be no increase to the wage rates. Its representative noted that the percentage differential between the two (2) levels is now lower than it has been in the past. He submitted that a gap of 30% is appropriate in all of the circumstances. We were urged not to award a significant increase given the Government's revenue position. The Board was also asked to just set the rate for October, 1990. In this regard, it was asserted that the pay equity increase should be subtracted from any increase awarded.

After assessing all of the evidence, the Board finds that there has historically been a difference of approximately 30% in the wage rates paid to Employment Standards Auditors 1 and 2. A difference of that magnitude existed in 1987 and 1988. The difference increased in 1989 and 1990 largely as a consequence of the retroactive settlement affecting the Employment Standards Auditors 2. The pattern re-emerged in 1991, albeit to a certain extent because of the second pay equity installment. Despite intervening developments, the fact remains that the percentage difference in 1991 is approximately the same as existed in 1987 when the grievances were launched. The Board has been persuaded that this gap in wage rates between the two (2) levels must be narrowed. The Grievance Settlement Board has determined, inter alia, that the work of the Employment Standards Auditors 1 has become more complex. In this sense their job has moved closer to that performed by the Employment Standards Auditors 2. It follows that the rate differential should, therefore, be compressed.

It is difficult, if not impossible, to precisely quantify in dollar value the extent to which the job of Employment Standards Auditor 1 has changed. After considerable thought, we elect to set the wage rates effective October, 1990 as follows:

Minimum: $646.67 per week

Maximum: $743.73 per week

This constitutes a 10% increase at both ends of the salary grid.

An identical percentage increase is to apply to the other levels on the grid. At the minimum the wage rate is 80% of that paid to the Employment Standards Auditors 2. The comparable figure at the maximum is 78.5%. Prior to this adjustment the relative standing was at 73.1% at the minimum and 71.4% at the maximum. This award will also reduce the percentage difference to 24.4% at the minimum to 27.3% at the maximum. This is, in our judgment, a significant, but fair, improvement over the existing 1990 rates. The increase reflects our assessment of the value of the change to the job of Employment Standards Auditor 1. The Board leaves it to the parties to calculate the 1991 rates. We will remain seized to deal with any difficulties they may encounter with respect to the implementation of this award.

Dated at Windsor, Ontario this 15th day of October ,1992.

M. Watters
M. Watters, Vice-Chairperson

Dissent Attached
S. Nicholson, Member

F. Collict
F. Collict, Member

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE CROWN IN RIGHT OF ONTARIO
(MINISTRY OF LABOUR)

- AND -

ONTARIO PUBLIC SERVICE EMPLOYEES' UNION

RE: EMPLOYMENT STANDARDS AUDITORS 1

DISSENT

Having participated in the formulation of this decision, as one of the Board members, I wish to dissent on the amount of the increase awarded. However, I agree with the Board's view that the appropriate yardstick in determining the 1990 rates for the ESA 1's is the ESA 2 wage scale.

Although it was appreciated by the Board to have been given a thorough knowledge of the job, by the study and analysis of the position specification of the Employment Standards Auditors 1 and those of other "comparable" positions, it ultimately seemed the most sensible and most useful to rely on a comparison of the two Class Standards of the ESA 1 and ESA 2. In this conclusion, I am in concurrence with my fellow Board members.

When the relationship between the wage rates for the two Class Standards is examined, the following relationship emerges:

1. in 1987 the ESA 1 was about 75% to 76% (min. to max.) of the ESA 2 scale;

2. by 1989, the ESA 1 had improved to about 77% to 78% of the ESA 2 scale (which was the difference in place at the time of the Wilson hearing into the grievances); and

3. in 1991, a negotiated "special adjustment" was retroactively added to the ESA 2 rates, of 11.6% changing the 1989 differential to 69% to 70%, and producing a 1990 comparison of 71% to 73%.

The Union proposed a method of determining the appropriate pay rates by "halving" the existing differentials, as explained at page 10 of the award. The differences, once divided in half, are as follows:

	1987	about 88%
	1989	about 85%
	1990	about 86%
and	1991	about 90%

The 1989 differential represents the point in time of the Wilson decision, and also is fairly close to a "mid-range" of the differentials noted. Thus, I would have set the ESA 1 wage rates for 1990 at 85% of the ESA 2, as a fair relationship between the two. Such a determination on the part of the Board would have been appropriate, in my view, and it would have required an increase of about 5% to 6% greater than was awarded here.

All of which is respectfully submitted.

DATED AT TORONTO, this 30th day of September, 1992.

Sandra Nicholson
Union Nominee

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T/0034/91-2

T/0034/91

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Employment Standards Auditor 1)

Applicant

- and -

the Management Board of Cabinet
(Ministry of Labour)

Respondent

BEFORE:	M. Watters	Vice-Chairperson
	S. Nicholson	Member
	F. Collict	Member

FOR THE UNION:
L. Robinson
Research Officer
Ontario Public Service Employees Union

FOR THE EMPLOYER:
B. Doherty
Staff Relations Officer
Management Board of Cabinet

HEARING:
March 27, 1992
June 22, 1992

By way of an Award dated October 15, 1992, the Board established a wage rate for the Employment Standards Auditor 1 classification, effective October, 1990. These rates were as follows:

Minimum: $646.67 per week;

Maximum: $743.73 per week.

The Board left it to the parties to calculate the 1991 rates. We remained seized to deal with any difficulties they might encounter with respect to the implementation of the Award.

A difference subsequently arose between the parties with respect to the calculation of the rates as of January 1, 1991. In this regard, we received submissions from the Union dated January 28, 1993 and March 24, 1993 and from the Employer dated March 15, 1993. The Board has reviewed all of these submissions in the context of our earlier Award.

Simply put, the difference between the parties concerns the treatment of a second pay equity increase of $51.11 which was added to the rates on December 31, 1990. It was the thrust of the Union's position that the pay equity adjustment should be added to the rates ordered by the Board and that the total should be subject to the 5.8% general increase which was effective January 1, 1991. It was the thrust of the Employer's response that the pay equity adjustment should not be added to the October, 1990 rates for purposes of calculating the 1991 rate level. The Employer seemed to suggest that the $51.11 increment, in effect, incorporated the percentage increase previously granted by this Board. In offering rates for 1993, it was the position of the Employer that the affected employees should make approximately 78.5% of the Employment Standards Auditor 2 rate for that year. We were asked to conclude that the appropriate gap between the two (2) classifications should be 27%. These percentages were referred to at page 12 of the Award.

As stated above, our Award established wage rates effective October, 1990. In our judgment, it follows that the pay-equity adjustment of December 31, 1990 should be added to the new rates as of the latter date. It is the rates resulting from this addition that are subject to the 5.8% general increase for 1991. Stated another way, the Board does not accept that the second pay equity adjustment should be included within the 10% increase awarded as of October, 1990 or that such increase should be captured by the aforementioned adjustment. In our deliberations, we established a new wage rate for October, 1990, this being the effective date for the amended class standard. Logically, any subsequent salary adjustment, be it as a result of pay equity or general increase, should be added to the October, 1990 rate.

The Board, therefore, directs that the 1991 rates be established as proposed by the Union. This results in the following wage grid for January 1, 1991:

738.25   756.49   776.39   796.32   818.29   840.94

The rates for 1992 and 1993 should not prove difficult to calculate given our clarification of the 1991 base. We note that the parties did not contest the Board's jurisdiction to establish a 1991 rate.

Dated at Windsor, Ontario this 3rd. day of May ,1993.

M.V. Watters
M.V. Watters, Vice Chairperson

S. Nicholson, Member

Dissent Attached
F. Collict, Member

DISSENT

RE: SUPPLEMENTARY AWARD

EMPLOYMENT STANDARDS AUDITOR - 1

This Member was generally in agreement with the original award in this case which accorded to the Employment Standards Auditor-1, an increase in wage rate of 10%, effective October, 1990 (see p. 11 of original award). However, this Member does not agree with this Supplementary Award relative to the calculation of retroactivity, for reasons set out below.

1. JURISDICTION

The jurisdiction of this Board is very narrow indeed and, as set out in Article 5.8.1 of the Collective Agreement between the parties,

> "...the Employer will set the salary range for the new ...classification subject to the right of the parties to have the rate determined by arbitration."

(underscoring added)

The jurisdiction of this Board is to establish the "rate". The parties agreed at the original hearings that the rate to be established by the Board should be for October 1990. This the Board has done.

At page 12 of the original award, it was stated that,

> "The Board leaves it to the parties to calculate the 1991 rates. We will remain seized to deal with any difficulties they may encounter with respect to the implementation of this award."

The parties had difficulty calculating retroactivity associated with the award of a 10% increase to the October 1990 rate, owing to the issue associated with a pay equity adjustment that had been accorded to the grievors, December 31, 1990. This matter was raised by the Employer in the initial hearings (noted at page 10 of the original award). However, it was not taken into consideration in any way whatsoever in the initial award of a 10% increase.

In the view of this Member, the majority, in this Supplementary Award, cannot now seize a jurisdiction to establish a retroactive adjustment relative to a matter on pay equity which was raised at the hearing, was not taken into account in the award, and is now a matter of dispute between the parties.

This Board had the sole jurisdiction to establish the rate. This, the Board did, and it therefore exceeds its jurisdiction by making a Supplementary Award on an issue as contentious as the matter of a pay equity adjustment.

2. PAY EQUITY VS GENERAL INCREASE ADJUSTMENTS

At page 2 of the Supplementary Award, the following is stated:

> "In our deliberations, we established a new wage rate for October, 1990, this being the effective date for the amended class standard. Logically, any subsequent salary adjustment, be it as a result of pay equity or general increase, should be added to the October, 1990 rate."
>
> (underscoring added)

It is clear from the above, that the majority treats these two separate types of increases as being identical in nature. Such, however is not the case. The general increase is an increase to rates in effect, with no qualifications.

By contrast, a pay equity increase results from a comparison with other rates, and the *extent of the pay equity increase is* predicated upon the difference between the existing rate *at the time of comparison*, and the rate for the comparators used. In this subject case, the December 31, 1990 pay equity increase was an increase of 8.7% at the minimum and 7.6% at the maximum. Obviously, by raising the *actual* wage rate by 10% effective October 1990, the pay equity increase determined on the *prior* base rate as related to whatever comparator was used, was *not* warranted in December 31, 1990. (That is, a base rate in October of 1990 that, at the maximum was 7.6% higher, would *not* have resulted in a pay equity increase at all when compared to the comparator.)

From the above, it is clear that the "logic" referred to by the Board at page 2 of the Supplementary Award should result in a separate treatment for the general increases and pay equity increases.

3. WINDFALL

The logic of the Supplementary Award clearly grants a *windfall* to the grievors. That is, by December 31, 1990, the Supplementary Award ensures that the grievors have a 17.6% increase at the minimum for the rate, and 18.7% at the maximum of the rate.

In the view of this Member, this certainly was *not* the intent of the Board when the initial rate increase of 10% was set, effective October, 1990. As this Member understands the law,

1. Where there is a wrong, there must be a remedy, and
2. The intent of the remedy, generally, is to place the individual in the same position he would have been had the wrong *not* occurred.

In this case, the *wrong* was that the rates for the ESA-1's were 10% lower than they should have been as at October 1990. In effecting a remedy, one must calculate forward from October 1990 to the present time to determine the retroactive entitlement of the ESA-1's. Had their rate been 10% higher as at October 1990, they clearly would not have received the December 31, 1990 pay equity adjustment.

4. JURISPRUDENCE

In support of the above argument with reference to jurisdiction, this Member would cite West-Park Hospital v. Services International Union, Local 204 (Ont. C.A.), judgment of March 11, 1993 (see attached).

Without going into detail on this case, an interest board appointed by the Minister of Labour, pursuant to the Hospital Labour Disputes Arbitration Act, decided on a labour rate for carpenters and electricians, but the interest board did not take into account issues associated with the Pay Equity Act and a Pay Equity Plan agreed to by the parties. The Divisional Court rejected the claim of the Employer that the board had exceeded its jurisdiction and the Appeal Court dismissed the Appeal with costs, as follows:

> "The result, as we see it, is not a contravention of the Pay Equity Act but on award made by the board in accordance with its mandate which in turn requires further adjustments in the pay of the female dominated jobs in order to comply with the Pay Equity Act and the agreement entered into between the parties pursuant to the Act. There is no breach of the Act and no loss of jurisdiction in the board."
>
> (underscoring added)

Clearly the above case turned upon the jurisdiction or mandate of the board, and it is in this respect that the narrow jurisdiction of the interest board in this case parallels the narrow jurisdiction of the interest board in this subject case involving ESA-1's.

In conclusion, this matter between the parties is not a simple one to resolve. Section 13(5), s.s.(10) of the Pay Equity Act is as follows:

> "(10) A pay equity plan that is approved under this Part prevails over all relevant collective agreements and the adjustments to rates of compensation required by the plan shall be deemed to be incorporated into and form part of the relevant collective agreements."
>
> (underscoring added)

As stated earlier by this Member, this Board has no jurisdiction to determine the issue as set out in this Supplementary Award. The issue is complex and this Board had no knowledge of the Pay Equity Plan between the parties. In fact, the matter was raised by the Employer in the original hearing; but the December 31, 1990 pay equity adjustments were not considered in the establishment of the October 1990 rate.

This Member would decline jurisdiction to decide the issue of the inclusion of the December 31, 1990 pay equity adjustment in the calculation of the retroactive payment to the ESA-1's, resulting from the original award of thic Board.

F.T. Collict

April 29/93
Date

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T/0035/91

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Maintenance Operations Analyst)

Applicant

- and -

The Crown in Right of Ontario
(Ministry of Transportation)

Respondent

BEFORE:	H. Brown	Chair
	S. Nicholson	Member
	F. Collict	Member

FOR THE APPLICANT: L. Robinson
Ontario Public Service Employees Union

FOR THE RESPONDENT: K. Brown
Staff Relations Officer
Management Board of Cabinet

HEARING: May 11, 1992

The Board has been established under Article 5.8.1 of the collective agreement in effect between the parties to resolve a wage dispute for the new classification of Maintenance Operations Analyst. The Incumbent is Fred Jewer who was formerly classified as an Engineering Services Officer 3 (atypical). His rate has been maintained at the ESO 3 rate. This classification is in the Scientific and Professional Services category. He has held his present position since June 1984 and has been employed in the Ministry of Transportation since 1965. He filed a grievance concerning the classification in August 1988.

By award of the Grievance Settlement Board (Gorsky - June 20, 1990) it was found as follows:

> "Accordingly and for the above reasons, the grievance succeeds and we declare that the grievor is improperly classified and direct the Ministry to create a proper classification for him. The Employer shall be given ninety days to re-classify the grievor. The Board shall retain jurisdiction pending the implementation of this decision including entitlement to retroactivity and interest."

Following this award a new class standard for Maintenance Operations Analyst was established with the final text agreed by the parties in February 1992. The parties did not however, agree with the appropriate salary range for this classification which is the issue now submitted to arbitration under the agreement. There is no dispute as to the Board's jurisdiction in this matter.

The Employer continued its assessment of the wage rate for the new classification at ESO 3 rate which it proposes to maintain. The Union's proposal is to increase the wage rate for this classification to a Regional Maintenance Operations Officer (RMOO) classified as a TM-18. To provide equality between these classifications would require an increase in 1990 of 16.6% at the minimum and 15.6% at the maximum.

The Incumbent works in the Maintenance Operations Office of the Ministry of Transportation and reports to the Maintenance Operations Analyst Engineer. Two other employees in the office report to the Engineer and are in a position of Maintenance Operations Review Officer classified atypically as ESO 4. Atypical class allocations are used when in general the description fits the class better than any other but is significantly different from the positions in the class but contains some elements of the work to be classified with an equivalent level in complexity, responsibility skills and knowledge. On that basis the Employer classified the Incumbent as an ESO 3.

The Board received the submissions of the parties at the hearing and agreed to receive a written reply to the Union's position from the Employer subsequent to the hearing. After receiving all the pertinent material the Board has met in an executive session to consider the submissions with regard to the issue in this matter and inconsideration of its award. While we have not set out in detail all of the submissions with regard to the various comparable positions referred to by the parties, all of the submissions in that regard have been carefully examined by the Board.

In the Gorsky award which dealt with the Incumbent's claim of improper classification and re-classification as an ESO 4 (atypical) and where the Employer's position was that the grievor was properly classified as an ESO 3 (atypical) the Board stated:

> "The attempt to shoe-horn the grievor into the ESO 3 classification was to say the least a tortured one. Having examined his duties and responsibilities in the light of the ESO 3 class standard it is too far of the mark to permit an atypical classification as might be the case in those situations identified in the King case. . ."

That Board declared that there was a misfit by a significant margin in the classification and those comments were followed by the declaration of an improper classification set out above.

Having regard to that finding by the Gorsky Board, it is not in our opinion, now an available argument to the Employer to maintain its position of the application of the ESO 3 (atypical) wage level as the criteria for the wage rates of the new classification of Maintenance Operations Analyst. That class standard was agreed by the parties following the direction in the Gorsky award to create a new classification and on its face must be taken to require the Incumbent to perform at a higher level of complexity, responsibility, skills and knowledge than his previous classification as an ESO 3 (atypical). There can be no other logical conclusion following the Gorsky award that the Incumbent has a prima facie right to a different and higher wage rate than applicable to the ESO 3 class standard. In our view the difference for this Board to determine is the quantum of the applicable increase and for that purpose we have examined and assessed the ESO 4 and TM-18 standards which we find are particularly relevant to this issue.

The Maintenance Operations Analyst class standard refers to the position as follows:

> "This class covers positions which analyse and monitor Ministry highway maintenance operations such as pavement repairs, salting sanding, etc. in order to ensure that operations are efficient, cost effective and in accordance with established policy and procedures. They work under general supervision and within the instructions and outlines of the projects. In consultation with senior staff they prepare policy, operational recommendations and technical reports, referring these as required for review and approval."

The RMOO (TM-18) sets out the purpose of this position as

> "to provide technical assistance to the Regional Municipal-Maintenance Engineer in administering the Kings highway and maintenance program and southwestern region."

In reply to the submission of the Employer the Union referred to the Maintenance Operations Review Officer (MORO) which position is classified as an ESO 4 (atypical). The Board ruled at the hearing that this was a proper reply but allowed the Employer to respond in writing as to its position regarding that class standard as noted above. The purpose of this position is -

> "to provide support to the Maintenance Operations Analysis Engineer to ensure that Maintenance Operations throughout the Province are carried out in an efficient and effective manner and in accordance with established policy and procedures."

This typical classification monitors maintenance operations on a regular basis. In consideration of the comparable requirements between the ESO-3 and ESO-4 positions indicate that there is a higher level of work performed by the MORO than the classification held by the Incumbent; particularly we have reference to the Incumbent's supporting role in analysing and recommending solutions while the ESO 4 standard set out more responsibility for the entire analysis and in which the employee plays a lead role in directing the implementation of new or improved procedures. There is a greater level of responsibility indicated in ensuring the maintenance operations are dealt with in a satisfactory manner and it indicates a high level of problem resolution.

In contrast the ESO 3 has a support role while the other classification indicates a greater individual responsibility for review and recommendation. There is a difference in Skills and Knowledge with reference to the terminology of "good" as opposed to "sound" knowledge of Ministry of policies. There is a difference between possessing tact and discretion and the possession of a high degree of such qualities.

We are satisfied on a review of the classification requirements in these two positions that the ES04 (atypical) does not equate with but needs in material areas the Incumbent's classification. We note that the wage rate difference between the ES04 and ES03 is 11.8% at the minimum and 14.02% at the maximum in 1990.

We have considered the Union's position with regard to the RMOO classification rated at TM-18. The RMOO provides technical advice and assistance and makes recommendations pertaining to maintenance policies and procedures on behalf of the Regional Municipal Engineer and provides technical advice for head office during the preparation of directors and standards. The Incumbent of that position reviews and recommends priorities and represents the Regional Municipal engineer in contract reviews. The Incumbent's position requires analysis support in monitoring operations to ensure adherence to maintenance standards which is not at the same level as the RMOO. Duties numbered 8 and 9 in the position description of the TM-18 relating to approval of oversize and overweight moves in the southwest region and carrying out comprehensive technical reviews of major operational elements are not part of the Incumbent's classification standard and are a significant part of the RMOO requirement.

The Accountability and contacts require considerably more responsibility than indicated in the Operations Analyst position as the RMOO is accountable to provide a direct technical resource capable of assessing all aspects of the Ministry's maintenance operation with daily contacts with the District and Head Office Maintenance staff and with outside consultants, material and equipment suppliers with the provision of advice and co-ordinating work required in the provincial highway system. Each region has an RMOO who is classified as a TM-18 in the Management Compensation Plan, the Incumbent works closely with these employees. While their job specifications are similar, there are sufficient dissimilarities in the major responsibilities of these positions that the Union's position that these two classifications should obtain the same wage rates cannot be supported. We do not accept the Union's submission that the Incumbent's position is at a higher and more general level because it is at the Ministry Headquarters. The Regional staff may well be required to take a more hands on control of the operations than at the staff level at headquarters.

The position description of a TM-18 refers to work performed under the general direction of the Regional Engineer with accountability as noted above. That distinguishes the staff position of the Operations Analyst which involves advice and assistance to appropriate Ministry staff. We do not find that the Incumbent's responsibilities are broader than that of a RMOO having regard to the specific functions of the RMOO classification which are not contained in the class standard of an Operations Analyst. As well, the comparison of Skills and Knowledge required in the two jobs indicates that the RMOO exceeds that required of the

Incumbent's position.

For these reasons we reject the Union's submission that the appropriate comparison for the rate of pay of the Incumbent's classification is that of TM-18. We also find that the comparative standards provided in support of the Employer's position to maintain the ESO-3 rate for the new classification are not satisfactory having regard to the direction of the GORSKY award and cannot be applied by this Board.

We find that the Union has established that the Maintenance Operation Analyst classification wage rate should be increased from the ESO-3 wage level but we are not persuaded that either of the classification standards of ESO-4 or TM-18 are directly applicable and should be applied to the Incumbent's classification. We are however persuaded on the evidence that there should be an increase to some extent, to the new classification rate within a comparable range to both of these classifications, the most relevant of which we find to be ESO-4. That classification has a minimum rate of $872.18 with a maximum of $1,056.78 which is 11.8% higher at the minimum and 14.2% higher at the maximum than the rate for an ESO-3.

As we have found that the Maintenance Operations Analyst position does not equate to either the ESO-4 or TM-18 classifications but that an increase is justified for this position from the ESO-3 level, the Board awards that:

Effective December 13th, 1990, the minimum classification rate of the Maintenance Operations Analyst shall be $842.00 with a maximum classification rate of $1,026.00.

The Board retains jurisdiction as to the implementation of this award.

DATED AT OAKVILLE, THIS 21st DAY OF OCTOBER, 1992.

HOWARD D. BROWN, CHAIRMAN

Sandra Nicholson

SANDRA NICHOLSON, UNION NOMINEE

FRED COLLICT, EMPLOYER NOMINEE

ADDENDUM

MAINTENANCE OPERATIONS ANALYST

This Member is not in disagreement with this award.

It is clear from the initial **GORSKY** award **(G.S.B. #699/88 - JEWER)** that there was a "misfit" of the grievor's position as compared to the ESO-3 class standard "by a significant margin". It was this panel that heard the evidence in this case and the Inference from the award was that Mr. Jewer carried responsibilities greater than those of an ESO-3.

The issue before the interest arbitration panel is to determine the salary range to be assigned to the new class standard of Maintenance Operations Analyst.

At page 8 of the award it is stated that,

> "...we have found that the Maintenance Operations Analyst position does not equate to either the ESO-4 or TM-18 classifications, but that an increase is justified for this position from the ESO-3 level..."

This Member concurs in this finding; but an analysis of the information referred to the panel would seem to indicate that the new class standard is more comparable to the ESO-3 level positions reviewed than the ESO-4 level.

The ESO-3 positions reviewed are at Ministry headquarters and they tend to be advisory, policy/procedure, and generally staff types of functions. These positions plus the new class standard for a Maintenance Operations Analyst Indicate the common characteristic duties of investigate, evaluate, monitor, problem identification, assessment of data, preparation of reports and summaries, recommendation of policies and procedures.

By contrast, the ESO-4 level defines problem areas, develops alternative solutions and plays a leading role in directing the implementation of new and improved procedures throughout the Province. As stated in the award at page 6, the ESO-4 level does not equate in material areas with new Maintenance Operations Analyst class standard.

In view of the above, this Member would have found that an appropriate increase would fall in the 3 to 5% area at the minimum of the range for an ESO-3 (ie. approximately a one step level increase above the 1990 ESO-3 rate), as opposed to the 7.9% increase awarded.

Notwithstanding the above, and in view of the peculiar difficulty associated with the assessment of responsibility levels from the data presented, this Member is in concurrence with this award.

F. T. Collict.

F.T. Collict
Member

Oct. 15/92.

Date

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T/0037/91

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Inspector of Signs and Building Permits 2)

Union

- and -

the Crown in Right of Ontario
(Ministry of Transportation)

Employer

BEFORE:	H. Brown	Vice-Chairperson
	B. Switzman	Member
	F. Collict	Member

FOR THE UNION: L. Robinson
Researcher
Ontario Public Service Employees Union

FOR THE EMPLOYER: E. Johnson
Staff Relations Officer
Management Board of Cabinet

HEARING: September 21, 1992

The Board was established pursuant to the terms of the Act to determine a dispute by the parties concerning the wage rate for the classification of Inspectors of Signs and Buildings Permits 2 (ISBP-2) in accordance with Article 5.8.1 of the collective agreement. This classification was in the Administrative Services categories and employees in the classification worked in eighteen districts of the Ministry of Transportation. The employees were reclassified as of April 1990 to Technician 2, Municipal Engineering (Atypical) and unilaterally transferred to the Technical Services category by the Employer.

The reclassification followed a decision of the Grievance Settlement Board (Dissanayake, January 5, 1990) in which it was found that the twenty six employees who had grieved the classification of ISBP-2 had been improperly classified and the Board directed the Employer to create a new classification to reflect their job. After delay in implementing the award, a reclassification to Technician 2, Municipal Engineering (Atypical) became effective on April 1, 1990 and Inspectors were given the job title of Corridor Management Officer. There is no position specification for this job. The reclassification was made pursuant to a Maintenance Renewal Project which was to review Management and operational structure of the highway maintenance program and was completed early in 1990.

The Employer submitted that the reclassification represented a 12.6% salary increase from the ISBP-2 classification and that the revised classification covers the positions with a change in the value of the work performed by these employees. That salary increase recognized the duties of the job which existed at the time of the reclassification and had not changed. The Employer maintained that the salary increase for the ISBP-2 classification as a result of the reclassification is appropriate.

The Union submits that the proper comparison of the work required of the employees pursuant to the revised class standard is the classification of Senior Municipal Supervisor, TM-17 which is in a technical module of the Management Compensation Plan and is, in its submission a bench mark to determine the appropriate salary rates for the ISBP classification. The Senior Municipal Supervisor was paid 23.2% more at the minimum and 23.7% more at the maximum than ISBP-2. The Union recommends a five step salary grid applying such increases.

The Board received the submissions of the parties at the hearing following which it has met to consider all of the relevant material submitted to it and the preparation of its award.

The prior Class Standard for ISBP-2 was,

> "This is the working level for positions of employees in the Department of Highways who perform inspectional duties in the field to ensure uniform control of buildings, encroachments, entrances, signs, trees,

> shrubs and miscellaneous structures or other potential visual impediments on lands adjacent to or within the limits of the right-of-way of a provincial highway. . .
>
> These employees may work independently in an assigned area investigating applications, drawing location plans, issuing permits, collecting fees associated with permits and renewals and maintaining files of all structure permits which have been issued within their area of operation. They investigate infractions and prepare form letters for the District Engineer's signature. They persuade the parties concerned to correct infractions and where legal action is necessary they prepare legal documents and request local police authorities to lay charges. They may appear as witnesses if required."

The definition in the new Class Standard indicates in part:

> "This class covers positions of employees who administer policies and guidelines dealing with Ministry corridor control functions for the provincial highway system. . ."

It is indicated that the typical duties include:

> "Employees maintain the Ministry permit systems within the districts to accomodate development within corridor control policies and guidelines. Duties include processing applications for building and land use, entrances, encroachments and signs and legal agreements for utility approvals; collecting and processing permit fees and initiating action on overdue accounts, implementing methods and procedures to improve section operation; assisting in preparing a variety of reports and maintaining permit proposed data base."

In the Dissanayake decision (supra) a Class Standard was described as one which is,

> "not expected to capture the details of a particular employee's duties before it is found to be a proper fit. That is the functional position specification. A class standard must necessarily be in broader terms

> because it must be able to represent a number of positions whose duties may not be identical. Nevertheless the substantive duties of a position must reasonably fit the terms of a class standard. . ."

The Board found that the grievors who were then in the ISBP-2 classification engaged in minimal field inspection and their major role was negotiation and consultation and was more complex,

> "than mechanically applying a set of requirements laid out in a statute or regulation to decide whether a permit should be issued or withheld. . . Instead the grievors have to consider various Ministry policies and guidelines. . . Furthermore, the grievors are no longer limited to approving or disapproving permits. When a proposal is received, the grievors assess it and then engage in discussions with the proponents and their technical experts and professionals. They also consult with the Ministry's own technical experts to get their opinion of a proposal. Having done that, the grievors work with the proponents and their advisors to remedy any defects and put together a proposal that will be acceptable to the Ministry. They thus play the role of a mediator and liaison between the Ministry and the proponent rather than one of an enforcer. . . As a result of these changes the grievor's job has become more an office type job than a field inspection type job contemplated in the class standard."

The District Engineering Services Officer works under the direct supervision of the Engineering Services Supervisor in a position which requires,

> "To provide technical and administrative support to the District Engineering Services Section to ensure that new utility installations and relocated utilities are positioned within the Ministry right-of-way in a manner that will be compatible with present maintenance functions, teacher highway construction and in accordance with current policies procedures and sound engineering principles."

Part of the duties required of the Incumbents are:

> "Ensure utility relocations and applications involving Bell, hydro, cable T.V., gas, water lines and sewers are properly located and the work carried out in an approved manner. . . "

The purpose of the position of the Senior Municipal Supervisor is described as:

> "Assist the District or Municipal Engineer to deliver to Municipalities and Unincorporated Areas the Ministry's Municipal Roads Program for the development and maintenance of Municipal Road System. Also assist in the delivery of Municipal Airport Program."

The accountability in that position indicates that the Incumbent

> "is fully responsible to the District Municipal Engineer for the technical and administrative supervision of at least two senior municipal foreman and "judgment" technical supervisory and administrative duties are performed largely using own initiative and general direction on the District Municipal Engineer."

It is the Employer's position that the new class standard demonstrates the revision which reflected the changes which occurred in the job since it was classified as ISBP-2 involved a change in the value of the work which was recognized in the reclassification to Technician 2, Municipal Engineering which resulted in a salary increase of 12.6%. That revised class standard confirmed the duties which existed at the time of the reclassification.

In the Union's submission the focus that the grievor's job changed from inspection duties in the field to negotiation and consultation with a major role of mediator and liaison with more complex work calling for greater judgment. It was submitted that the consequence of reclassification of the Inspectors was that they were moved to the step in the Technician 2 grid which was closest to the rate at which they were in their former grid and thereby received the minimum allowable increase of somewhat less than 2%. The reclassification however made possible future increases through annual increments which would not otherwise have been available. The G-13 and G-14 allowances are no longer paid. It was argued that the class standard for Technician 2 Municipal Engineering provides a lesser basis than the prior class standard for ISBP-2 in assessing their duties and responsibilities and therefore in its submission the applicable classification should be Senior Municipal Supervisor TM-17.

The Board has considered the detailed submissions of the parties on this issue and has taken into account the decision of the Grievance Settlement Board with regard to the classification dispute. We find that the classification of Senior Municipal Supervisor proposed by the Union as a bench mark is not comparable to the ISBP-2 as it is a Management classification in which personnel including foremen are supervised. In addition the incumbents have a substantial financial-budgeting component; direct input into the Head Office Committees approval of time sheets; the preparation of tendering documents. The judgment and accountability functions substantially differentiate the requirements of this position from the class standard for the Inspectors.

The District Engineering Services Officer Technician-2 Municipal Engineer is somewhat comparable to the ISBP-2 but in view of the distinctions drawn in the Dissanayake award, the Board cannot find merit in the Employer's position that this classification is the proper fit for the revised class standard or the ISBP-2 incumbents as the Employer was directed to create a new classification to reflect their job. While the ESO-Tech 2 is relatively close in comparisons it does not accurately reflect the revised class standard which differs in duties and responsibilities having regard to the findings contained in the Grievance Settlement Board award.

Reference was made to the classification of Senior Permit Adminstration and Compliance Officer (ESO-3) the purpose of which is:

> "to provide technical and administrative support to the District Engineering Services Sections. To ensure that new and the utility installations and relocated utilities are positioned within the Ministry right-of-way in a manner that will be compatible with the present maintenance functions, future highway construction and in accordance with current policies procedures and sound engineering principles."

The Incumbents act under the direct supervision of the Engineering Services Supervisor and perform related administrative clerical functions and carries out field investigations and minor surveys. This classification is paid at the maximum level 15.2% greater than the ISBP-2 at the same level. A duty of this position is to provide advice as a Ministry Specialist to the District, Regional Field Staff, Head Office Executive. The public and utility compares on matters relating to the evaluation of the Ministry's permit functions . . .
This compares directly in our view to the class definition requirement of the "employees who administer policies and guidelines dealing with Ministry control functions of the provincial highway system." In addition, we find the skills and knowledge requirements of these two positions to be similar in scope and responsibility dealing with Ministry policies and requiring written communication skills.

The TM-17 is a totally different job with assistance to the District Engineer and with greater responsibilities for technical and administrative functions including representation of the Ministry at various meetings with government or professional or private representatives with internal reviews of Ministry policies and procedures and supervises at least two senior municipal foremen. This is distinguished from the function of liasion and assembling data with submissions of recommendations by the inspectors.

As the Employer was directed by the Grievance Settlement Board to create a new classification and having regard to the findings in that decision in which the Board gave a "Berry" order, we find that the application by the Employer of the classification of ESO-Tech 2 Municipal Engineer while providing in time an increase of 12.6% to the ISBP-2 rates was not an appropriate comparable classification. We find that while the requirements are not exact, the best fit for the former ISBP-2 class standard is the classification of ESO-3 which classification adequately recognizes the duties in the revised classification for the Corridor Management Officer. The difference in the applicable increases in the salary grid between the Tech-2 Municipal Engineer rates and the ESO-3 in which classification the Board finds these employees should have been placed, must take into account the increases which were applied by the Employer in the reclassification of the Incumbents to the Technician-2 classification in April 1990.

Subject to the foregoing, the Board finds that the new classification of Inspector of Signs and Building Permits 2 shall be rated and paid in accordance with the ESO-3 classification rates. The Board awards that effective April 1st, 1990, the date of the reclassification of the Incumbents to Technician-2, the employees shall be placed in a salary grid equivalent to the ESO-3 salary rates.

The Board retains jurisdiction as to the implementation of this award.

DATED AT OAKVILLE, THIS 28th DAY OF JANUARY, 1993.

HOWARD D. BROWN, CHAIRMAN

'Brian Switzman - see addendum'
BRIAN SWITZMAN, UNION NOMINEE

dissent
FRED COLLICT, EMPLOYER NOMINEE

DISSENT RE AWARD

INSPECTOR OF SIGNS & BUILDING PERMITS - 2

This Member is not in concurrence with this award, for the following reasons:

1 The rate awarded in this case is at the ESO-3 level, based upon the comparator of the "Senior Permit Administration and Compliance Officer."

2. This position is the expert position in the Ministry of Transportation.

> "To provide administrative, maintenance and enforcement support to the Transportation Corridor Management Office for the Ministry permit system."

This position provides,

> "....Technical expertise, advice and guidance to Head Office, Regional and District Staff."
>
> (Position Description, June 10, 1990). (underscoring added).

In effect, this position at the ESO - 3 level provides the expertise and counsel to the Inspector Signs and Building Permits - 2 (ISBP-2) in the performance of their duties.

3. It is noteworthy also that the Senior Permit Administration and Compliance Officer acts for the Head, Permit Administration and Compliance, as required.

4. In total, this Senior Permit position at the ESO-3 level clearly exceeds the requirements for the ISBP-2 position and the 15.2% higher rate for the ESO-3 level at the maximum level is warranted.

5. The comparator proposed by the Employer was the District Engineering Services Officer, classified at the Technician 2 - Municipal Engineering level. It is the position of this Member that the rate for this position is appropriate for the ISBP-2 position, for the following reasons:

   (a) This position performs essentially the same duties as the ISBP-2 of plan reviews; review of utility applications; ensuring that Ministry right of way requirements are observed and maintained; analysis of contracts associated with financial breakdown, signatures, estimates, billings and cost sharing criteria; review and provision of data concerning property management relative to disposals/retentions, transfers and road closings; etc.

   (b) Most importantly however, this position also requires the judgment associated with negotiation, mediation and consultation which was a major factor in the Dissanayake award which required that a new class standard be established for the ISBP-2. This is clear from the skills and knowledge required by the District Engineering Services Officer position description, as follows:

   > "Ability to maintain a good working relationship with utility companies, consultants, municipalities, other Ministries, contractors and the public."

In view of the above this Member would have confirmed the rate for the new ISBP-2 class standard at the level for the Technician 2 - Municipal Engineering, as opposed to the ESO-3 rate level, effective April 1, 1990.

F.T. Collict

F.T. Collict - Jan. 19/93.

IN THE MATTER OF THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT,
R.S.O. 1980 C. 108

AND IN THE MATTER OF AN ARBITRATION

BETWEEN:

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(the "Union")

- AND -

THE CROWN IN RIGHT OF ONTARIO
(MINISTRY OF TRANSPORT)
(the "Employer")

ADDENDUM

I have joined with the Chairman in his award. I concur with the Chairman's conclusion that as of April 1, 1990, the new classification of Inspector Signs and Building Permits 2 shall be rated and paid in accordance with the Engineering Services Officer 3 (ES03) classification rates.

My only difference with the Chairman is that I believe that the Union has made out a stronger case for a comparison with the Senior Municipal Supervisor, TM-17. However, in all of the circumstances, I believe that the Chair's conclusion represents a fair compromise of the competing positions of the parties, even though a higher increase is justified on the facts.

Respectfully submitted.

DATED AT TORONTO, this 27th day of January, 1993.

Brian Switzman
Union Nominee

Ontario Public Service
Labour
Relations
Tribunal

Fonction publique de l'Ontario
Tribunal administratif
des relations
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T/0040/91

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Gunsmith 1 & 2)

Applicant

- and -

the Crown in Right of Ontario
(Ministry of the Solicitor General)

Respondent

BEFORE:	B. Keller	Vice-Chairperson
	B. Switzman	Member
	F. Collict	Member

FOR THE COMPLAINANT: D. Bull
Research Officer
Ontario Public Service Employees Union

FOR THE RESPONDENT: L. Oudyk
Staff Relations Officer
Management Board of Cabinet

HEARING: August 11, 1992

DECISION

This Board was constituted pursuant to s. 5.8.1 of the Crown Employees Collective Bargaining Act to determine wage rates pertaining to new standards for Gunsmith 1 and 2. The new standards were established on December 13, 1990 as a result of the Grievance Settlement Board decision, Alexander (2504/86), in which the Board found the grievor improperly classified as Instrument Repairer Foreman/Woman (Atypical) and ordered the employer to properly classify his position. Following the establishment of the new class standard, the parties were unsuccessful at negotiating the new wage rates to apply, hence the instant reference.

The Gunsmith classes are in the MS-026 Trades and Crafts Group in the Maintenance Series Category. The positions for which the Gunsmith class standards were written, i.e. Assistant Force Armourer and Force Armourer, are in the Ontario Provincial Policies Quartermaster Store. The incumbents are civilian members of the O.P.P. staff. The class series consists of two levels of work.

The new class standard reads as follows:

Category Maintenance Services	Group MS-02C Trades and Crafts
Series Gunsmith	Class Code

GUNSMITH 1

This class covers positions of employees who provide a limited range of gunsmithing duties. They perform the work under close technical guidance of the Gunsmith 2 and carry out well defined tasks.

TYPICAL DUTIES

Employees in these positions assist and/or carry out well defined tasks as follows: repair, recondition, modify and test firearms and firearms accessories; inspect and test various types of ammunition. They perform these functions by using gunsmithing techniques and a variety of precision and hand tools. Under close supervision employees design and fabricate tools, parts and firearms accessories as required to fine tolerances using precision tools and equipment such as jigs and cutters which may be altered in order to perform gunsmithing work. Employees are also responsible for maintaining the gunsmithing areas in a safe, clean and orderly condition. Employees also maintain basic records of gunsmithing activities.

SKILLS AND KNOWLEDGE

A working knowledge of firearms, firearms accessories and ammunition is required. Basic skill in using a variety of machine and hand tools relevant for gunsmithing work.

Category Maintenance Services	Group MS-02C Trades and Crafts	
Series Gunsmith		Class Code

GUNSMITH 2

This class covers positions of employees who provide a full range of gunsmithing services for various organizations. They repair, recondition, modify and test a variety of restricted and unrestricted firearms and firearms accessories. They also inspect and test various types of ammunition. They design and fabricate tools and firearms accessories. Employees maintain records of gunsmithing activities including arms storage, testing, modification and repair work. They act as a technical resource for various organizations including law enforcement agencies as well as ministry personnel and may provide training to the Gunsmith 1.

TYPICAL DUTIES

Employees repair, recondition, maintain, modify and test firearms and firearms accessories. They also inspect and test various types of ammunition. They perform these functions by using gunsmithing techniques, and a variety of precision machine and hand tools. Employees design and fabricate tools, parts and firearms accessories as required to fine tolerances using precision tools and equipment such as jigs and cutters which may be altered in order to perform the gunsmithing work. Employees are also responsible for maintaining the gunsmithing areas in a safe, clean and orderly condition. As technical authorities in gunsmithing, employees provide expertise to the government and outside organizations by examining, analyzing and making recommendations on firearms and ammunition. As a technical resource, on occasion they may provide testimony as expert witnesses at court and they may also prepare and present instructional material for a segment of training workshops hosted by law enforcement agencies.

SKILLS AND KNOWLEDGE

A thorough knowledge of gunsmithing techniques, firearms, firearms accessories and ammunition technologies is required. Skill in using a variety of machine and hand tools relevant for gunsmithing work and the creative ability to design and fabricate tools or make equipment alterations. Ability to provide technical guidance to ministry personnel and good communications skills.

Where there is a GSB decision dealing with the classification dispute, it is often very usefull to use that as the starting point in the analysis of the work performed. Where the GSB comments on the relationship of the work performed to the old class standard, that is of particular benefit in cases such as this. We make this comment because the GSB, unlike this Board, has heard testimony regarding the work performed and how it has evolved. In contrast, this Board proceeds, normally, by way of written submissions which contain the assertion of the parties. In terms of probative value, the findings of the GSB are to be preferred. In this respect, therefore, we accept the findings of the GSB as they deal with the duties of the position, how they varied from the old class standard, and what impact that has and adopt them as our own. For ease of reference the GSB decision is appended to this award.

In the instant case, the union has structured its submission in its normal fashion: it reviews the role and duties of the Gunsmith, compares the old and the new class standard, and provides external and internal comparisons.

The salient points in the first section are:

- 90% their work is performed for the O.P.P.;

- The O.P.P. has an arsenal of approximately 14,000 weapons;
- One incumbent, with a background in machine shop learned his trade on the job. The other followed a four year full-time program in gunsmithing at the Colorado School of Trades;
- They occasionally perform work for the Ministry of Natural Resources and local police forces;
- The incumbent's supervision is administrative only and is not technical in nature;
- They have responsibility for firearms maintenance, repair, customizing and design, for the ammunition/ballisters function including a quality assurance program, and provide technical expertise on the suitability of ammunition;
- They act as a technical resource to the Equipment Advisory Committee as well as other senior supervising offices making policy decisions and to local and regional police forces;
- They have ongoing contacts with equipment and ammunition supplies;
- They act as instructors;
- They are recognized as experts by the provincial courts.

The union then goes on to compare the old and the new class standard to demonstrate that there is greater value to the new class standard. We do not propose to spend any time on this area because, as the GSB pointed out, "There is no fit at all here".

With respect to an internal comparison, the union submits that regard should be had to Firearms Instructor (Instructor I) Ontario Police College. The union argues that it is "in several respects...similar to the O.P.P. Gunsmith Class". A review of their duties and responsibility satisfies us that the two jobs are not sufficiently related to warrant using as a comparison.

In the section entitled External Comparisons, the union commences with: "External comparisons with the Gunsmith are difficult". It then proceeds to indicate why and concludes that a potential comparator in the RCMP is the position of Senior Ordnance quality Assurance Inspector. Their position specification reads as follows:

RCMP GRC

RCMP MEMBER POSITION CLASSIFICATION QUESTIONNAIRE GENERAL

CLASSIFICATION DES POSTES DE MEMBRES DE LA G.R.C. QUESTIONNAIRE GÉNÉRAL

Position Security Classification
Classification sécuritaire du poste
Reliability

DO NOT TYPE ON REVERSE

NE PAS ÉCRIRE AU VERSO

Complete in four
(1) Headquarters
(2) Div./dir.
(3) S-Div./Br.
(4) Originator

Remplir en quatre exemplaires
(1) Direction générale
(2) Div./dir.
(3) S.-div./s.-dir.
(4) Expéditeur

JOB TITLE – TITRE DU POSTE SENIOR ORDNANCE QUALITY ASSURANCE INSPECTOR	Current Classification Classification actuelle TI-05	Collator and Position No. No de collation et no du poste S1344-003
Name – Nom VACANT	Rank – Grade	Reg. No. – Nº matr.

Div./Dir. HQ Div.	S-Div./Br. – S.-div./s.-dir. SCIENCE AND TECHNOLOGY BRANCH	Unit – Service ORDNANCE QUALITY ASSURANCE SECTION	Location – Lieu OTTAWA, ONTARIO

Title of Immediate Supervisor – Titre du superviseur immédiat I/C ORDNANCE QUALITY ASSURANCE SECTION	Collator and Position No. Nº de collation et nº du poste S1344-001

Bilingual Region Région bilingue	☐ XXX OUI	☐ NO NON
Unit Bilingual Complement Effectif bilingue de l'unité	☐ XXX OUI	☐ NO NON

NOTE: If Unit Bilingual Complement identified YES, do not complete this portion.
NOTA: Si vous avez coché la case OUI en ce qui concerne l'effectif bilingue de l'unité, ne pas remplir cette partie.

POSITION LANGUAGE REQUIREMENTS - EXIGENCES LINGUISTIQUES DU POST

☐ BilinXXX bilingue ☐ English essential anglais essentiel ☐ French essential français essentiel ☐ Either/Or réversible

SECTIONS 1 TO 6 TO BE COMPLETED BY INCUMBENT – LES NUMÉROS 1 À 6 DOIVENT ÊTRE REMPLIS PAR LE TITULAIRE

1 - JOB SUMMARY – DESCRIPTION SOMMAIRE DU POSTE

Under the general supervision of the I/C ORDNANCE QUALITY ASSURANCE SECTION the incumbent conducts scientific quality assurance tests and inspections and prepares written reports on pre-contract, pre-production and production samples of ammunition, soft body armour, hard body armour and other ordnance and ballistic protection materials that have been procured by the RCMP, Correctional Services Canada (CSC), Supply and Services Canada (SSC) or other approved agencies. He/she supervises the maintenance of scientific equipment utilized by the Section to conduct their technical inspections. He/she maintains a selection of ammunition and ballistic protective equipment samples/standards, firearms and other weaponry, and technical journals/scientific papers for operational and reference purposes. He/she instructs Ordnance Quality Assurance Inspectors in the use of specialized equipment and quality control procedures utilized to evaluate ordnance and ballistic protection materials. The incumbent requires the legal designation as a "peace officer".

2 - DESCRIPTION OF DUTIES – in order of importance (use the "WHAT - WHY - HOW" method). If more space is required, insert a new page properly numbered, eg. 3(a) - 3(b)

DESCRIPTION DES FONCTIONS – en ordre d'importance (et selon la méthode "QUOI - COMMENT et POURQUOI"). Ajouter une page si nécessaire et la numéroter correctement ex. 3(a) - 3(b).

TIME TEMPS %

1. Conducts scientific quality assurance tests and inspections on pre-contract, pre-production and production samples of ammunition, body armour and other ordnance and ballistic protective equipment that has been procured by the RCMP, Correctional Services Canada (CSC), Supply and Services Canada (SSC) or other approved government or law enforcement agencies by:

   - examining the samples externally for production/packaging flaws and general quality of workmanship

   - disassembling the samples and checking for internal flaws, hidden materials and unacceptable production methods

   - utilizing scientific measuring equipment to determine critical dimensional parameters of the product samples and comparing these data against standards specified for the samples in question

NOTE 1. Forward Form 2338, Position Security/Reliability Requirement, to Director, Departmental Security.
2. Forward all other documents to O i/c Organization & Classification Br.
3. Attach copy of approved Organization Chart.

NOTA: 1. Transmettre la formule 2338, "Exigence sécuritaire/de fiabilité du poste" au directeur de la Sécurité ministérielle.
2. Envoyer tous les autres documents au S.-D. – Organisati Classification.
3. Annexer une copie de l'organigramme approuvé.

1053 (86-01) (•)

- calibrating a computing chronograph and ballistic screens to measure ammunition velocities as fired from various firearms and from various ranges and thereafter comparing the results against standards specified for the ammunition in question

- measuring ammunition velocities utilizing a chronograph, ballistic screens, a universal receiver and standard velocity and pressure test barrels and thereafter comparing the results against standards specified for the ammunition in question

- measuring chamber pressures of ammunition by using a universal receiver and standard velocity and pressure test barrel with copper or lead pressure test crushers and thereafter comparing the results against standards specified for the ammunition in question

- testing ammunition in various firearms at different ranges to scientifically measure ammunition accuracy, bullet grouping characteristics, mean point of impact, bullet trajectories, bullet penetration, and ammunition break-up characteristics in various recipient media.

- analyzing, interpreting and adjusting raw test measurements, providing correction factors if required and calculating averages, extreme variations, standard deviations and other statistical analyses

- preparing written and verbal reports on samples inspected that includes an assessment of: timeliness of delivery, quality assurance problems observed, suitability of product packaging/identification, how the sample characteristics compare to the relevant product standard specifications and his/her expert recommendations on whether to accept or reject the product.

2. **Supervises the maintenance of equipment that is utilized by the Section to conduct their technical inspections by:**

-routinely examining and verifying the correct operating condition and calibrations of all scientific equipment, specialized tools, firearms and other weaponry in the Section

-directing that maintenance be completed on all scientific equipment, specialized tools, firearms and other weaponry that is found to be defective

-directing that routine maintenance be completed on all scientific equipment, specialized tools, firearms and other weaponry in the Section

-fabricating, preparing and maintaining suitable ballistic test media and apparatus required for specialized quality assurance testing or research & development

3. **Maintains a selection of ammunition and ballistic protective equipment samples/standards, firearms and other weaponry, and technical journals/scientific papers for operational and reference purposes by:** 10

-maintaining ammunition and ballistic protective equipment reference standards

-retaining select technical specifications and purchase descriptions that relate to ammunition and other ordnance materials and equipment

-maintaining a collection of technical/scientific papers, technical documents that were issued by ordnance manufacturers, trade journals and related publications

-controlling and maintaining the Section's collection of reference firearms and other weaponry

4. Instructs Ordnance Quality Assurance Inspectors in the use of specialized equipment and quality control procedures utilized to evaluate ordnance and ballistic protection materials by:

-providing instruction on the use and maintenance of the scientific equipment, specialized tools, firearms and other weaponry in the section

-ensuring that Ordnance Quality Assurance Inspectors conform to the accepted procedures used to test ordnance and ballistic protection materials

3 - **RECOMMENDATIONS** – Explain your requirement to provide advice or make recommendations. Give examples of types of recommendations, HOW a TO WHOM they are made.

OMMANDATIONS – Devez-vous donner des conseils ou faire des recommandations? Donnez des exemples des types de recommandations, de manière dont elles sont faites et des gens à qui elles sont envoyées.

1. to i/c OQAS via oral or written report concerning procurement of new equipment, design and placement of scientific testing equipment ✓

2. to i/c OQAS via oral or written report concerning firearms, ammunition, and armour testing procedures ✓

3. to i/c OQAS via oral or written report concerning disposition of ammunition suspected of being faulty ✓

4 - **DECISIONS** – Explain your requirement to make decisions (provide examples). A decision is a delegated responsibility for which you are accountable.

DÉCISIONS – Devez-vous prendre des décisions? (Donnez des exemples.) Une décision est une responsabilité déléguée qui vous incombe.

1. routinely made as to whether firearms are servicable and safe for testing purposes ✓

2. routinely made as to whether or not cartridges can safely be test fired ✓

3. routinely made as to whether or not fired cartridge cases exhibit physical abnormalities indicative of possibly unsuitable or unsafe ammunition ✓

4. test layout and scheduling for protocols assigned by the i/c OQAS ✓

5 - **MANAGERIAL RESPONSIBILITY – FONCTIONS DE GESTION**

A - Explain your requirement to SUPERVISE and APPRAISE employees. Supervision means formal, delegated, continuing responsibility for the work of othe Force members and Public Servants. Supervision claimed must not conflict with the organization chart or with that claimed by others in your work group.

Expliquez quelle est votre part de responsabilité dans la supervision et l'appréciation des employés. Le terme supervision implique un pouvoir officie délégué et constant face au travail d'autres membres et employés de la Fonction publique de la Gendarmerie. Les responsabilités inscrites ne doivent pa être en contradiction avec l'organigramme, ou avec les responsabilités inscrites par d'autres membres de votre groupe de travail.

n/a

B - Explain your requirement to redeploy/acquire/transfer human resources.
Devez-vous reaffecter/obtenir/transferer des ressources humaines?

n/a

C - Explain your requirement to acquire, utilize and control physical resources.
Expliquez quelle est votre part de responsabilité en ce qui concerne l'acquisition, l'utilisation et le contrôle des ressources matérielles.

obtains material for fabrication of test containers, orders specialized items required for QA testing that are not normally available from SSC catalogues or local purchase

monitors ammunition and weapon standards for reference purposes and orders replacements to maintain a prescribed level in stock for immediate use

supervises the maintenance of ammunition and ballistic protective equipment samples/standards, firearms and other weaponry, and technical journals/scientific papers or operational and reference purposes

D - Explain your responsibility for co-ordination of work performed for, or with other Branches and Sections.
Expliquez quelle est votre part de responsabilité dans la coordination du travail executé pour ou avec d'autres sous-directions et sections.

- co-ordinates the scheduling of OQAS tests with Dwyer Hill Training Centre in order to ensure suitable range facilities are available

E - Explain your responsibility for administering or controlling funds.
Expliquez quelle est votre part de responsabilité dans l'administration ou le contrôle de fonds.
Are you delegated financial responsibility as per the Financial Admin. Act or Admin. Manual?
Détenez-vous des pouvoirs financiers en vertu du Manuel d'adm. ou de la Loi sur l'admin. financière?

☐ YES OUI ☐ NO NON ☐ OTHER AUTRE (If YES or OTHER explain) (Si vous avez coché la case OUI ou AUTRE, expliquez.)

n/a

6 - CERTIFICATION – Complete A or B. ATTESTATION – Remplir A ou B.

A - THE ABOVE POSITION DESCRIPTION IS ACCURATE AND COMPLETE.
QUE CES RENSEIGNEMENTS CONSTITUENT UNE DESCRIPTION EXACTE ET COMPLÈTE DE MON TRAVAIL.

INCUMBENT - TITULAIRE

DATE

B - THIS POSITION IS VACANT. THE QUESTIONNAIRE WAS PREPARED BY
CE POSTE EST VACANT. LE QUESTIONNAIRE A ÉTÉ PRÉPARÉ PAR :

WRPapple

Sgt. W.R. Papple
Science & Technology Branch

PAR

90 06 29
DATE

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SECTIONS 7 TO 11 TO BE COMPLETED BY IMMEDIATE SUPERVISOR – LES SECTIONS 7 A 11 DOIVENT ÊTRE REMPLIES PAR LE SUPERVISEUR IMMÉDIAT

7 - EDUCATION AND TRAINING – INSTRUCTION ET FORMATION

A - Do the duties and responsibilities require a Regular Member ie. Completion of Recruit Training and Recruit Field Training.
Les tâches et responsabilités exigent-elles l'affectation d'un membre régulier, c.-à-d. après la formation de base ou la formation pratique des recrues?

☐ YES / OUI ☐ NO / NON

B - Identify the minimum level of academic or other formal training required beyond Force minimum standards to provide the basis for the development of the skills and knowledge needed in the position with minimum experience.
Indiquer le niveau minimum de scolarité ou d'autre formation officielle nécessaire en sus des exigences minimums de la Gendarmerie afin de fournir la base pour le perfectionnement des connaissances et aptitudes requises pour le poste qui demande une expérience minimum.

force minimum

8 - EXPERIENCE – Type of experience required for this position. Refer to the minimum length of time and type of experience required under normal working conditions to perform the duties and responsibilities. **EXPÉRIENCE** – Genre d'expérience requise pour ce poste. Faire allusion à la période de temps minimum et au genre d'expérience requis dans des conditions de travail normales afin d'accomplir les tâches et les responsabilités.	No. of Yea Nbre d'anne
extensive experience as a military armourer or armament technician or previous employment in manufacturing facility dealing with firearms, propellants, and/or small arms ammunition	5

9 - SCOPE OF INVESTIGATIONS – List the offences for which an incumbent normally has full investigation responsibilities.
PORTÉE DES ENQUÊTES – Faites une liste des délits pour lesquels le titulaire a généralement la responsabilité entière de l'enquête.

n/a

10 - EXTENT OF SUPERVISION – AMPLEUR DE LA SUPERVISION EXERCEE

A - t instructions and guidance do you provide to an incumbent?
Quelles instructions et directives donnez-vous au titulaire du poste?

General instructions regarding specific projects. Guidance as required when implimenting new quality assurance procedures.

B - At what stage and to what extent do you check the work of an incumbent?
À quelle étape et dans quelle mesure contrôlez-vous le travail du titulaire?

Normally on completion of task.

C - What matters does an incumbent refer to you for decision?
Quelles sont les questions pour lesquelles le titulaire se réfère à votre décision?

-Section policy
-unusual characteristics of ammunition or other products found during Q.A. procedures
-potentially dangerous or unsafe ammunition/weapons observed during Q.A. procedures
-disposal of defective ammunition and components in large quantities

11 - SUPERVISOR'S COMMENTS – COMMENTAIRES DU SUPERVISEUR

This position is primarily responsible to assist in the Quality Assurance testing of ammunition and other ordnance products for the Canadian law enforcemnent community. The incumbent, however, also provides significant technical support to the forensic service provided by the i/c Ordnance Quality Assurance Section.

	SIGNATURE	DATE
Date duties and responsibilities assigned to position. Date d'attribution des tâches et des responsabilités.	vacant	
12 - UNIT COMMANDER (Signature confirms concurrence.) CHEF DU SERVICE (La signature confirme l'identité de vues.)	Sgt for D. Penk A/IC OQAS AUL.	900703

13 - COMMENTS OF OIC RESPONSIBLE FOR MANAGEMENT OF THE WORK GROUP
COMMENTAIRES DE L'OFFICIER RESPONSABLE DE LA GESTION DU GROUPE DE TRAVAIL

The incumbent of this position is responsible for a number of complex and demanding scientific/technical tasks. The consequences of error are, in the least, embarrasement and major financial loss to the RCMP and client agencies. The more serious consequence of error could be serious injury or loss of life of a client police officer as a result of being provided with unreliable or unsafe ammunition or protective equipment. There is no other agency that provides such expertise to Canadian police departments and the Canadian courts of law.

SIGNATURE	DATE
Sgt for R.C. Shaddick, Insp. OIC, S. & T. Branch AUL	900703

It would appear that the incumbent in the above position are paid about 20% more than gunsmiths.

The employer has taken the position that because of the statement by the GSB, no usefull purpose is served by comparing the old and the new class standard. No internal comparisons are made. With regard to external comparisons the employer indicated that it conducted a pay research survey of a number of establishments in both the private and public sector. It relied, specifically, on two comparisons and provided the following charts:

12. ARMOURER - INSTRUMENT TECHNICIAN 10 (RCMP)

Armourer - Instrument Technician 10	Gunsmith 2
Duties and Responsibilities: • Examine, service, repair, modify, and refit all types of firearms and firearms products used by the RCMP and Corrections Services Canada (CSC). Test-fire all weapons on completion of repair or service. Examine all semi-automatic weapons on a scheduled maintenance program. Refinish and reblue all types of firearms used by RCMP and CSC.	**Duties and Responsibilities:** • Repair, recondition, maintain, modify and test a variety of restricted and unrestricted firearms and firearms accessories.
• Design specialized tools, not commercially available but used in repairing or modifying weapons. Fabricate specialized tools and instruments to various specifications in many cases to within .0001 inch tolerance.	• Design and fabricate tools, parts and firearms accessories to fine tolerances.
• Test and appraise all new and experimental firearms and firearms products proposed for use.	• Inspect and test various types of ammunition.
• Compile detailed records of all parts replaced, repaired or refitted, and ensuring a work order is completed on each weapon. • Job description is silent on this point.	• Maintain records of gunsmithing activities including arms storage, testing, modification and repair work. • Maintain the gunsmithing areas in a safe, clean and orderly condition.
• Acts as a technical consultant to senior management in areas of firearms and firearms equipment.	• As technical authority in gunsmithing, provide expertise to the government and outside organizations. As a technical resource, on occasion may provide testimony as expert witness at court.
• Research and review pertinent policy.	• Class standard is silent on this point.
• Job description is silent on this point. • Present training and instruction courses on handling and maintenance of firearms, including preparation of instructional material and supervision of "hands on" instruction.	• May provide training to the Gunsmith 1. • May prepare and present instructional material for a segment of training workshops hosted by law enforcement agencies.
Skills and Knowledge: • Experience in gunsmithing and blueing.	**Skills and Knowledge:** • Thorough knowledge of gunsmithing techniques, firearms, firearms accessories and ammunition technologies.
Machinist experience in precise drilling, milling, jig and die fabrication, heat treating, surface grinding, metal turning, hand fitting of parts. Ability to use specialized equipment and instruments.	• Skill in using a variety of machine and hand tools relevant for gunsmithing work.
• Inquisitive mind to determine cause of and solution to problems encountered. Ability to design and fabricate tools, jigs, fixtures and gauges.	• Creative ability to design and fabricate tools or make equipment alterations.
• Ability to act as technical consultant to senior management.	• Ability to provide technical guidance to Ministry personnel.
• Ability to present lectures, prepare course material.	• Good communications skills.

The above comparison indicates that the Armourer and Gunsmith 2 are comparable overall in level of responsibilities, skills and knowledge.

11. ARMOURER - PRW7 (Department of National Defense, Federal Government)

Armourer - PRW7	Gunsmith 2
Duties and Responsibilities: . Perform tests, adjustments, inspections, preservation and depreservation, repairs and modifications to all types of weapons and small arms.	**Duties and Responsibilities:** . Repair, recondition, maintain, modify and test a variety of restricted and unrestricted firearms and firearms accessories.
. Make modifications in accordance with CFTOs.	. Design and fabricate tools, parts and firearms accessories to fine tolerances.
. Job description is silent on this point.	. Inspect and test various types of ammunition.
. Ensure security regulations regarding the storage of weapons undergoing repair are strictly adhered to. Complete daily and weekly time cards. . Ensure serviceability of equipment and tidiness of work area.	. Maintain records of gunsmithing activities including arms storage, testing, modification and repair work. . Maintain the gunsmithing areas in a safe, clean and orderly condition.
. Job description is silent on this point.	. As technical authority in gunsmithing, provide expertise to the government and outside organizations. As a technical resource, on occasion may provide testimony as expert witness at court.
. Assist in the on-the-job training of junior privates. Supervise the training of junior tradesmen. . Job description is silent on this point.	. May provide training to the Gunsmith 1. . May prepare and present instructional material for a segment of training workshops hosted by law enforcement agencies.
. Repair and set combination type locks and safes; test and adjust weigh scales; inspect and repair ancillary equipment, assist in machine shop.	. Class standard is silent on this point.
Skills and Knowledge: . Comprehensive working knowledge of Boffin, Howitzers, small arms including automatic weapons and submachine/machine guns. Comprehensive knowledge of hydraulics to work on Boffin and Howitzer. Knowledge of repair procedures pertaining to weapons.	**Skills and Knowledge:** . Thorough knowledge of gunsmithing techniques, firearms, firearms accessories and ammunition technologies.
. Ability to use common hand tools and power hand tools; gauges pertaining to weapons; precision measuring instruments, basic machinist skills.	. Skill in using a variety of machine and hand tools relevant for gunsmithing work.
. Capability to perform tests and adjustments to sighting systems of Boffin and Howitzers and to all small arms held on the base.	. Creative ability to design and fabricate tools or make equipment alterations.
. Ability to supervise the training of junior tradesmen and assist in the on-the-job training of junior privates.	. Ability to provide technical guidance to ministry personnel.
. Ability to read and write in English.	. Good communications skills
. Complete knowledge of range safety regulations; knowledge of safety practices.	. Ability to maintain the gunsmithing areas in a safe condition.

The above comparison indicates that the Armourer and Gunsmith 2 are comparable overall in level of responsibilities, skills and knowledge.

Finally, it submitted that the mean of the maximum wage rates surveyed demonstrated that the Gunsmith 2 was, at the applicable time, 7.1% ahead of market.

In cases like this, an examination of the comparators used by both parties will show some relationship to the job in dispute. If not, they likely would not have been chosen by the parties. The difficulty, of course, is that there are no perfect matches. What the Board has to do is compare the functions and try to place a value on those aspects that are similar. That is what we have attempted to do. In doing that what is often found is that comparisons used by one side, which they claim adds to or diminishes the value of the job, are often matched by the comparisons used by the other party which then makes the same claim. In the instant case, our review of the external comparisons offered by the parties result in just that type of scenario: to a large extent they cancel each other out. What we are left with, however, are two significant factors. The first is that the gunsmiths are unique in the OPS. They are the repositories of the technical knowledge needed by the O.P.P. The second is that, they work without technical supervision. This flows from the first point but is no less significant.

In determining the appropriate wage, we have looked specifically at the Armourer-Instrument Technician 10 (RCMP), the PRW7 and the Senior Ordnance Quality Assurance Inspector. An averaging of those rates would indicate an approximate 1% wage increase is warranted. To that, however, must be added a factor for the two points referred to above. It would seem that an additional 7.5% increase would be warranted. The total increase, then, is 8.5%, an amount which is to be added to the Gunsmith 2 rate that was in effect on December 13, 1990.

We remain seized to deal with any issues arising from this decision.

Nepean, this 27thday of January , 1993.

M. Brian Keller, Vice-Chairperon

Brian Switzman

Brian Switzman, Union Nominee

"I Dissent" (dissent attached)

Fred Collict Employer Nominee

DISSENT

GUNSMITH - 2

The task facing the Board in this case was simply and succinctly set out in the award, at page 7, as follows:

> "In cases like this, an examination of the comparators used by both parties will show some relationship to the job in dispute.........................
> The difficulty of course , is that there are no perfect matches."

Subsequent to an analysis of this case, this Member is of the opinion that the current rate for the O.P.S. Gunsmith - 2 is adequate, for the following reasons:

1. **The Instrument Tech 10 - RCMP** position performs all of the activities of the new Gunsmith - 2 class standard, with the exception of two components,

   (a) the Gunsmith - 2 receives administrative supervision, but not technical supervision of his Gunsmith duties, and

   (b) the Gunsmith - 2 tests ammunition when received from suppliers to ensure that it meets quality standards.

In effect, from a technical/trades viewpoint, the two positions are essentially identical. However, the O.P.S. Gunsmith - 2 currently is paid at a rate 14.6% greater than this Instrument Tech - 10, RCMP position.

2. The **Senior Ordinance - Quality Assurance Inspector** was advanced by the Union as a comparator to the O.P.S. Gunsmith - 2. This position is responsible for ballistics in the "Science and Technology Branch" of the RCMP. This position is paid at a rate 29.7% higher than the O.P.S. Gunsmith - 2. An analysis of the position description clearly indicates that this position is not a satisfactory comparator for the Gunsmith - 2 position; for the latter does not perform the complete range of ballistics work performed in the Senior Ordinance position.

CONCLUSION

What is the value, therefore, to be assigned to the two job elements present in the Gunsmith - 2 position, but which are not required in the Instrument Tech - 10 RCMP position? That is, the two job elements of,

- absence of technical supervision,
- requirement to test ammunition against quality standards.

In the view of this Member, the present rate for the Gunsmith - 2, at a level 14.6% in excess of the Instrument Tech - 10 RCMP position, is adequate to compensate for the above two noted factors. At best, any increase at all should fall below the level of 5%.

A salary rate for the OPS Gunsmith - 2 position, 23.1% (ie. 14.6% plus 8.5%) greater than the Instrument Tech - 10 RCMP position clearly is unwarranted.

F. P. Collict

FRED COLLICT

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T/0041/91

IN THE MATTER OF AN APPLICATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Geodetic Control Analyst)

Applicant

- and -

The Crown in Right of Ontario
(Ministry of Natural Resources)

Respondent

BEFORE:	S. Stewart W. Walsh I. Cowan	Vice-Chairperson Member Member
FOR THE APPLICANT:	L. Robinson Ontario Public Service Employees Union	
FOR THE RESPONDENT:	L. Oudyk Staff Relations Officer Management Board of Cabinet	
HEARING:	June 25, 1992	

factors that this board ought to consider in making its determination. The Union referred us to a decision on the setting of a rate in The Crown in Right of Ontario and OPSEU, T/0046/88 (Fraser) in which at pp. 10-11 the Board states:

> A board of arbitration under 5.8 of the collective agreement is not required by the Act to consider any factors. It may accordingly adopt any standards of review it considers relevant. Such a board of arbitration may therefore take the factors found in s. 12(2) of the Crown Employees Collective Bargaining Act directly into account to the extent it considers them relevant; or it may import those standards or some of them into its decision by implication, in dealing with the varied submissions of the parties; or, in appropriate circumstances, it may not rely on those standards at all, but on other standards. Its jurisdiction in this respect is determined by the fact that it was created by the parties in their collective agreement, for a specific purpose, and it is only an incidental and voluntary offspring of the collective bargaining scheme provided for in the legislation. The board accordingly has a broad jurisdiction to consider factors, limited only by relevance, and it excercises that jurisdiction for the very specific and limited purpose of determining a rate.

Section 12(2) of the Crown Employees Collective Bargaining Act provides as follows with respect to the considerations of a board or the Tribunal established under that Act:

> (a) the needs of the Crown and its agencies for qualified employees;
>
> (b) the conditions of employment in similar occupations outside the public service, including such geographic, industrial or other variations as the board may consider relevant;
>
> (c) the desirability to maintain appropriate relationships in the conditions of employment as between classifications of employees;
>
> (d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the work performed, the responsibility assumed and the nature of the services rendered.

The Geodetic Analyst class standard provides as follows:

This class covers positions of employees responsible for applying extensive mathematical analysis and quality control procedures to geodetic control surveys to ensure that the quality of geodetic control survey data produced by private and public agencies and provincial and municipal governments in Ontario and certain federal agencies for submission to and inclusion in the provincial geodetic bases is in accordance with Ontario geodetic survey standards and specifications and for providing advice to the surveying, mapping and engineering communities on a broad range of geodetic issues

Employees in these positions work under general supervision with considerable latitude in the exercise of independent judgment in making decisions related to the proposed design, accuracy, quality and content of geodetic control surveys.

TYPICAL DUTIES

Employees in these positions prepare evaluation reports on geodetic control survey proposals and technical reports recommending the acceptance or rejection of geodetic control surveys and where appropriate outlining suggested modifications. They provide data base management of provincial geodetic control survey data bases, including the security and integrity of the data bases. They coordinate the collection and conversion of control survey data into digital form and incorporate the data into the provincial geodetic databases. They transfer geodetic technology by providing technical expertise to the surveying, mapping and engineering communities by recommending and explaining geodetic network designs, measuring procedures, instrumentation and field practices/procedures. They participate in geodetic research and development activity with respect to procedures on geodetic data analysis and control survey observation as required. They provide training to unit staff on the use of geodetic data bases and related procedures.

SKILLS AND KNOWLEDGE

Thorough knowledge of geodetic control survey procedures, standards, specifications and geodetic computations, network design, adjustment and error analysis and modern positioning techniques, in-depth knowledge of computer based geodetic analysis software packages on various computer platforms, working knowledge of computer programming, allied software packages and various computer platforms such as micro, mini and mainframe, good verbal and written communication skills.

Geodesy is a branch of applied mathematics by which a network of points on the earth's surface are established with the greatest possible accuracy with respect to the height and distance between them. Geodesy entails the making, recording, confirming and interpretation of these measurements as well as storing and accessing them on computer systems. Geodetic co-ordinates are used for sea and air navigation, tunnelling, and the building of subways.

The provincial Geodetic Services Unit is in the Land and Resource Information Branch in the Ministry of Natural Resources. There are three employees in the classification in issue. The purpose of the unit is to function as the central repository for provincial geodetic control survey data, to establish provincial standards for geodetic control surveys and to conduct research and development.

While, as previously noted, the position of the Employer is that the new class standard is not comparable to the Technicial 3, Legal Survey class standard it was the submission of the Employer that the appropriate rate of compensation for the new classification of Geodetic Control Analyst for 1990 is the same rate payable for the Technician 3, Legal Survey. The yearly maximum for this classification is $44,959.64. The weekly rates are as follows:

Minimum				Maximum
$747.52	773.13	801.26	830.19	861.65

The position of the Union is that the following are the appropriate weekly rates:

Minimum				Maximum
$845.00	885.25	930.25	977.15	1028.10

In their submissions, both representatives made reference to various comparators, both internal and external. Clearly, the most relevant comparators are those classifications within the Ontario Public Service in the Scientific and Professional Services category. There are 122 classes within this category. Weekly maxima salaries for January, 1990 range from $629.16 for Archivist 1 to $1364.48 for Psychologist 3. The 1990 weekly mean rate for positions in this category is $876.47. The weekly mean rate for positions in the Technical Services category is $716.16. The Board was provided with the 1990 salaries for all positions in the Scientific and Professional Services category. The Union referred the Board to positions in two different classifications within the Scientific and Professional Services category, Senior Survey Plan Examiner classified as Inspector of Surveys 2 and Legal Survey Co-ordinator classified as Legal Survey Examiner 4. The Inspector of Surveys 2 1990 weekly maximum is $990.79 and the Legal Survey Examiner 4 1990 weekly maximum is $1072.85. It is the position of the Union that duties and responsibilities of the Geodetic Control Analyst are greater that those of the Senior Survey Plan examiner and are comparable to those of the Legal Survey Co-ordinator. The Employer referred the Board to three classifications within this category, Biologist 2B, Forester 2B and the Psychometrist 2. The 1990 weekly maximum for both the Biologist 2B and the Forester 2B classifications is $845.77 and for the Psychometrist 2 classification the 1990 weekly maximum is $861.65. It is the position of the Employer that the responsibilities of the Biologist 2B and the Forester 2B classifications are comparable to the Geodetic Control Analyst classification and that the Psychometrist 2 classification "is stronger in professional level and orientation".

The Union also made reference to external comparators, including three positions in the Data Management Group of the Geodetic Survey Division in the federal Department of Energy, Mines and Resources. The federal Geodetic Survey Division is much larger than its provincial counterpart, its work is in relation to a federal data base and it services a different clientele. The Data Management Group is one of three groups, the others being Systems Development and Survey. Effective April, 1990, for the EG-6 classification in which all these postions are situated, the minimum annual rate is $44,072 and the maximum is $53,645. There is a starting rate and five increments on this salary grid. It is this salary grid which forms the basis for the Union's wage proposal. As well, the Union made reference to a wage survey of Ontario Land Surveyors which indicates that the average weekly salary for all Ontario land surveyors with less than five years experience (private and government) for 1989 was $964.55 and for those with greater than five years experience the average was $1269.95.

Ms. Oudyk submitted that external comparisons were of little relevance. However the Employer referred to two provincial comparators in the geodectic units in British Columbia and Alberta. In British Columbia, the maximum annual rate for the classification of Licensed Science Officer for 1990 is $46,195 and in Alberta the maximum annual rate for the classification of Technologist 4 is $44,960. Reference was also made by the Employer to two other positions in the Data Management Group of the Geodectic Survey Division in the federal Department of Energy, Mines and Resources in the EG-4 classification where the yearly maximum for 1990 was $44,300.00.

As previously noted, it is our view that the most relevant comparators are those classifications in the Scientific and Professional Services category in the Ontario Public Service. While we found the external comparators provided to us to be of some assistance, the difficulty with external comparators is that the wage rates are only part of the compensation package and thus a simple comparison of wages rates is less than satisfactory. As well, as previously noted, the federal comparators perform work in a much larger department in a structure that is somewhat different and in which the scope of the work is somewhat different. None of the positions referred to entail precisely the same kind of duties and responsiblities as contemplated by the class standard in issue here. We have very minimal information in connection with the provincial comparators referred to us by the Employer. The survey of salaries of surveyors referred to above is only of marginal assistance in determining the appropriate rate for this class standard.

As would be expected, the duties and responsibilities contemplated by the other class standards and the specific positions in the Scientific and Professional Services category that we were referred to differ from those contemplated by the Geodetic Control Analyst class standard. The positions in the Biologist 2B and the Forester 2B classifications have some similarities to the duties contemplated in the Geodetic Control Analyst class standard, however the duties of the Geodetic Control Analyst classification are significantly different from the positions referred to in terms of the technical nature of the work and also in terms of the specialized computer knowledge that is required, including specialized software and computer programming. The position in the Psychometrist 2 classification is also significantly different from the position in the Geodetic Control Analyst classification in that the nature of the work performed is quite dissimilar. While there are some similarities between the positions classified as Inspector of Surveys 2 and Legal Survey Examiner 4 and the duties and responsibilities associated with the standard in issue again, there are significant dissimilarities. As the Union acknowledges, the Senior Survey Plan Examiner's job is mainly administrative and supervisory and the Legal Survey Co-ordinator's duties are also largely administrative, involving a specialized field of law. The duties contemplated by the Geodetic Control Analyst class standard are more technical in nature. Of all of the classifications referred to us in the Scientific and Professional category we found the Inspector of Surveys 2 classification to be the one that most closely parallels the duties contemplated by the Geodetic Control Analyst class standard, particularly in relation to the review of and assessment of survey work of others. However, we do not agree with the Union's submission that the duties and responsibilities contemplated by the Geodetic Control Analyst are greater than those contemplated by the Inspector of Surveys 2 class standards and thus should attract greater compensation. The administrative and supervisory duties associated with the Senior Survey Plan Examiner position are significant and in our view, justify greater compensation payable to that classification in relation to the Geodetic Control Analyst classification.

After carefully reflecting on the information before us and the submissions of the representatives of the parties in light of all the relevant criteria it is our decision that the weekly rates for 1990 for the newly created Geodetic Control Analyst classification will be as follows:

Minimum				Maximum
$792.37	$823.38	$857.34	$892.45	$930.58

It is so ordered. We remain seized to deal with any difficulities experienced by the parties with respect to the implementation of this decision.

Dated at Toronto, this 18th day of November, 1992

SI Stewart

S. I. Stewart - Chairperson

"I. J. Cowan"/ss

I. J. Cowan - Employer Nominee

"W. Walsh"/ss

W. Walsh - Union Nominee

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T/0047/91

WAGE DISPUTE PRUSUANT TO ARTICLE 5.8.1

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Real Estate Officers 1, 2, and 3)

Union

- and -

the Management Board of Cabinet
(Various Ministries)

Employer

BEFORE:	B. Keller	Vice-Chairperson
	B. Switzman	Member
	F. Collict	Member

FOR THE UNION:
J. Miko
Job Evaluation Officer
Ontario Public Service Employees Union

FOR THE EMPLOYER:
S. Patterson
Counsel
Legal Services Branch
Management Board of Cabinet

HEARING: September 9, 1992

DECISION

This arbitration deals with a wage dispute regarding the appropriate salary range for Real Estate Officers 1-3 classes. The Real Estate Officers are in the Property Assessment Group in the Administrative Services Category. These positions were formerly classified in the Real Estate Officer 1-3 classes as well as in the Property Agent 2 class.

The class series covers approximately 64 positions and is distributed with approximately 24 employees at level 1, 110 at level 2 and 13 at level 3. Level 2 is the full working level. The greatest number of employees are found in the Ministry of Government Services, the next greatest number at the Ministry of Transportation and the remainder spread through various ministries. Of interest, is that 12 years ago, Property Agents outnumbered Real Estate Officers two to one. At the end of the ongoing reclassification exercise, it is anticipated that only 7 Property Agents will remain.

These classifications were first grieved in August 1987. Two of the grievances, Reuters and Catherwood, were heard by two panels of the Grievance Settlement Board. One award was issued in March 1990 and the other in December 1990. In both cases the grievances were upheld and the employer was ordered to classify the grievors properly. Subsequent to that, a new class standard was prepared and agreed to, retroactive to December 13, 1990. The parties attempted to reach agreement with respect to rates of pay but without success.

The parties are in agreement that the new class standard and position descriptions adequately and properly reflect the work performed by the incumbents. They are appended to this decision.

The original series was initially established as a six level management series covering position in the management of property programs. Positions had to meet the criteria for exclusion from the bargaining unit and were to be evaluated using ranking based on six factors - commitment of funds, policy development, evaluation of employee's work, administrative responsibility and number of functions.

In 1980 a new job evaluation plan for management positions was implemented. It resulted in levels 1-3 becoming bargaining unit positions and level 4-6 remaining management. This fact is of more than passing interest given the decision of the GSB in Reuters (2319/87), which said, in part:

> The real problem in this series is that originally it had six levels, but now there are only three.
>
> Therefore, the preamble contains the following statement:
>
> > "This is a six level series and positions at the fourth, fifth and sixth levels are completely responsible, on an organization wide basis, for all activities relating to the specific functions allocated to them. They report to either the head or the assistant head of their respective property organization".
>
> However, there is no Class Definition for a REO 4, 5, or 6.
>
> It is clear that the Grievor is clearly not a REO I or REO 2, insofar as his duties and responsibilities vastly exceed the ambit of those class standards.
>
> The real issue is whether or not an REO 3 is a best fit or should a new classification be created.
>
> Upon a review of the evidence it seems that the grievor does not fit well into the REO 3 category for the following reasons:
>
> a) he is completely responsible for all the activities relating to the specific function allocated to him, that is, the leasing of major projects in Metro Toronto. This is referred to in the preamble as being characteristic of levels 4, 5, and 6 of the REO series;

b) he reports to the Manager of Metro Toronto Region, Leasing Services Branch who in turn reports to the Head of the Leasing Services Branch; This fulfills the requirement in the preamble that a REO 4, 5 or 6 report to either the head or assistant head of a respective property organization;

c) the REO 3 is under the direction of a Senior Real Estate Officer. This does not seem to cover Mr. Way's position as he is the Manager of Metro Toronto Region. In fact, it more closely matches the grievor's own title, which is Senior Lease Project Officer;

d) the REO 3 standard talks of the employee being responsible for a major element of a function, but the grievor is in fact responsible for the function (i.e. leasing) itself;

e) the REO 3 standard also talks about positions at Head Office that involve acting as assistants to the Senior Real Estate Officer in a relatively small specialized property unit. As noted above, the grievor is not the assistant to the Senior Real Estate Officer, in fact he is likely the Senior Real Estate Officer himself. Nor is the responsibility for leasing in Metro Toronto a "relatively small specialized property unit" as best as we can tell from the evidence lead in this case.

In the case of Catherwood, (332/89) the Board said, in part:

> The evidence is that the REO 2 classification was at the time, the working level of the REO series. Based on the application of the five ranking factors as reviewed above, it is clear that his duties fall beyond the working level of the series. Therefore we find

> that he is not property classified as REO 2.
>
> The issue then is, does the grievor fit into the REO 3 class or are his duties and responsibilities such that he is even beyond that. In the latter event, since there is no higher class in this series than the REO 3 class, there will not be any existing classification that is a proper fit for the grievor.
>
> On the basis of the evidence we cannot find that the grievor fits well into the REO 3 class standard. If this Board were to analyze the evidence there is a remarkable similarity between our findings and the findings made by the Board in Re Reuters, 2319/87 (Fisher) at p.4. We find the grievor to be in the same position as the grievor in that case. As that Board did, we find that this grievor does not fit well into the REO 3 classification.
>
> If the REO 4, 5 and 6 classifications existed, we may have been able to fit him into one of those classifications. In that we do not have that option, we must find that no classification that is a proper fit for the grievor exists.
>
> (emphasis added)

The above statements of the GSB are of some import and more will be said about them later.

The union's brief follows its standard format. Comparison of the new and old class standards; the class standards and related position specification; external comparisons.

- - - - - - - - - - - -

Comparison of the New and Old Class Standards

With regard to REO 1, the union summarizes its position as follows:

> In summary, the scope and potential areas of specialization are broader under the new class standard than under the old one, whereas the level of responsibility appears to be less. Under the new class standard, REO is work under supervision, they do not exercise it. These seemingly conflicting aspects of the new class standard in comparison with the old one must be weighed one against the other in determining the rate of pay appropriate to the new class standard for Real Estate Officer 1.

In dealing with REO 2, the union takes great pain to analyze the function of the old and new point by point. In a summary way they appear to wish to emphasize the following:

1. The degree of autonomy and responsibility has taken on greater significance.

2. There is a broader range of duties and responsibilities.

3. There is a greater emphasis on specialization.

4. Notwithstanding the above, knowledge and ability to perform in other area is required and may be demanded.

With regard to the REO 3, the union submits that all areas of skills, knowledge and responsibility show a marked upgrade from the former position.

The Class Standards and Related Position Specifications

In this section, the union reviews various position specifications (e.g. Appraisal Coordinator, Lease Project Officer, Property Administrator, Appraisal Agent, Negotiation Agent, Land Management Agent).

It is the union submission that an analysis of each position specification demonstrates a qualitative difference between the old and new and justifies an increase in wages.

External Comparison

The union offers external comparison consisting of the job description of Real Estate Officers or similar classification employed by nine Ontario municipalities and of the job description for Regional Agents employed by Ontario Hydro. Using the REO 2 as the bench mark, the survey shows a percentage difference of 10% at the minimum and 12.5% at the maximum. The union goes on, however, to analyse the various comparators and submits that the new class standard for REO 2 shows duties and responsibilities superior to those of the nine municipalities. This, they argue supports a 13.9% increase for REO 2.

The union, in addition to the 13.9% increase for REO 2, also proposes a 9.6% increase for REO 1. They justify the smaller increase by saying "the REO 1 is primarily an entry and training level position, and in light of our comparison of the new class standard with the old one".

An increase of 9.9% is sought for REO 3 which would narrow the existing gap between REO 2 and REO 3. It is submitted that this would perhaps facilitate advancement from one classification to another.

The employer submits that any comparison of the old and new class standard is irrelevant as it is clear that the differences are too profound and don't lend themselves to proper comparison.

In dealing with the GSB awards, the employer argues that the Board has no jurisdiction to make comments on the relative worth of jobs in financial terms. It is further submitted that the thrust of the Board's comments are that the duties fall outside the then existing standards.

The essence of the employer's arguments focuses on external comparison. It conducted a pay research survey on the REO 2. The results of the comparison show "that the working level Real Estate Officer 2 would be appropriately compensated at $47,893/$977.87 per annum/week (based on a 1% increase to the 1990 maximum wage rate)".

With regard to REO 1, the employer proposes the addition of three new steps. These would be at the low end of the range and would have the affect of lowering the entry rate. No change in the existing differential between REO 2 and REO 3 is proposed.

- - - - - - - - - - - - - -

It is useful to start our analysis of the instant case with a few comments on the awards of the GSB. As this Chair has written in the past, awards of the GSB can be instructive to s. 5.8 Awards as panels of the GSB have had the benefit of testimony and evidence whereas we must rely on briefs and the assertion of parties. We acknowledge that our jurisdiction and that of the GSB are different, but that does not preclude us from taking cognizance of their conclusions as they pertain to relationships between functions currently performed and how they compare to the old class standards. On that basis, we find that the statements quoted earlier in this decision put the dispute in context and are of benefit, particularly the comment of the job in relation to the higher levels that no longer exist and in analyzing the various external comparisons.

In our analysis of the arguments presented in the instant case, it is our conclusion that if an increase is warranted, it has to be justified on the basis of external comparisons. In this respect, the parties were particularly helpful. If this Board was to rely on the employer's survey only, an increase of 1.2% would be justified. They argued that this is not statistically relevant and therefore the status quo should be maintained. To the employer's survey, however, must be overlaid the one done by the union. Not surprisingly it purports to show an increase of 12.5% at the maximum is justified.

In its analysis of the union's survey, the employer noted what it perceived to be certain problems with some of the job descriptions used while, it argued, make them invalid comparators. In particular, reference was made to two comparators used that were management positions (Scarborough A and Durham). Reference was also made to North York and Halton where, it was argued, the comparisons were not at all valid.

In response, the union acknowledged North York was included by error and agreed to its exclusion. In reviewing the employer's survey, they took particular issue with GO Transit and Government of Canada as not being particularly useful.

In the end, there are five common comparators. (Scarborough, Toronto, Regional Municipality of Ottawa-Carleton, Peel and North York) They justify a 9.4% increase. Our analysis of the remaining job descriptions indicate that there are some basis of comparison in all of them, but not any one is a sufficiently good model to be able to use it exclusively. We can conclude two things, however: one that the increase warranted is greater than 1.2% and two, that the increase is not as substantial as the 12.5% proposed by the union.

What, then, is the appropriate increase. Frankly, in the instant case, it is virtually impossible to quantify with anything approaching scientific - like accuracy. Most, if not all of the job descriptions used in both surveys, contain some elements of the job. On balance, however, we conclude that the job descriptions used by the employer more closely approximate the work performed by REO 2. As a result, the increase must be less than just the five common comparators. On that basis, and on the basis of oral submissions made during the hearing and on the basis of the findings of the GSB, we judge that an increase of 5.3% to the REO 2 wages effective December 13, 1990 would be most appropriate under the circumstances.

As indicated above, we appreciate that this exercise in particular suffers from an ability to be scientifically correct. However, given the comments of the GSB, coupled with our determination that the employer's survey more adequately reflects the job as currently performed, we judge the increase granted above to be an equitable one.

We are not satisfied that there is any justification to alter the current relationships between the levels nor is there any rationale for adding the three steps to the REO 1 level as proposed by the employer. Consequently, the current number of steps as well as relationships between the levels are to be maintained.

Nepean, this 5 day of April, 1993.

M.B. Keller, Arbitrator

I Dissent

Fred Collict, Employer Nominee

I Dissent

Brian Switzman, Union Nominee

DISSENT

RE: REAL ESTATE OFFICERS 1, 2, & 3

This Member is not in agreement with this award for the following reasons:

1. As stated in the award at page 11,

   > "In our analysis of the arguments presented in the instant case, it is our conclusion that if an increase is warranted, it has to be justified on the basis of external comparisons".

   This Member agrees -- the basic disagreement lies with the treatment of the statistical compensation data and the final conclusion of a 5.3% salary increase.

2. The parties agreed on five common comparators (Scarborough, Toronto, Regional Municipality of Ottawa-Carlton, Peel and North York). These five would substantiate a 9.4% salary increase (see page 13 of award).

3. a) It should be noted, however, that this common data is highly selective, and is related to the largest and most well paid real estate personnel working for municipalities in Ontario.

   b) The undisputed information provided to this Board was that at least 50% of the REO's in the Ontario Public Service are located outside of Metro Toronto and surrounding area.

4. The statistical compensation survey data provided by the Employer included the five comparators advanced by the Union, as referred to in item 2 above. In addition, however, the Employer included data from other municipalities in Ontario for which an appropriate match of position descriptions could be made;
   - from London, Niagara, Go-Transit, Government of Canada, etc.

5. The weighted average for the salaries of real estate personnel from the Employer sample (excluding Sudbury but including the five common comparators for large municipalities), resulted in a rate that was 1.2% greater than the $47,893 salary paid to the OPS, REO-2's.

6. In the nature of compensation survey data, the problems associated with matching jobs, the general paucity of information in the total sample, and general statistical aberrations, a 1.2% difference is not statistically significant.

7. The Ministry had earlier recognized that the rates for REO's were too low and these rates accordingly, some time prior to this hearing, were brought into line with comparable market values for similar real estate work. Clearly, this is evident from the compensation survey.

8. At page 13 of the award, comment is made with reference to what might be an appropriate increase for the REO's,

> "Frankly, in the instant case, it is virtually impossible to quantify with anything approaching scientific-like accuracy..."

This Member agrees that the field of compensation is not scientific. However, the practices established by compensation practitioners are reasonably standard; and the compensation survey presented to this Board provided reasonable statistical data (evidence) from which the Board could draw a reasoned conclusion; -- and should have done so.

Instead, the majority concluded at page 13 of the award,

> "On balance, however, we conclude that the job descriptions used by the employer more closely approximate the work performed by REO2. As a result, the increase must be less than just the five common comparators."

And the majority then proceeds to "pull a number out of a hat" -- 5.3%.

Given the compensation survey data presented to the Board in this case, the data does not either indicate or justify a 5.3% wage increase.

9. At page 12 of the award, it was noted that the Union "took particular issue" with the inclusion of Go-Transit and Government of Canada data in the Employer's compensation survey. However, a review of the generic nature of these real estate positions would indicate a position match with the OPS, REO's.

10. Finally, an examination of the data in the compensation survey presented to the board reveals that it is heavily weighted with Toronto area and Ottawa comparators. In this respect, it is significant that data from Kingston, Windsor, Thunder Bay, North Bay, etc, and other smaller communities are not included in the survey, although most municipalities have real estate officers. Presumably this is a problem of "job match" with positions in smaller communities. Nevertheless, with approximately 50% of OPS, REO's located outside of the Toronto area, this information might have had considerable relevance. Given the total Employer sample presented as evidence in this case, however, the absence of this additional data was not fatal to the Employer's position.

In view of all of the above, and the generally accepted limits of the statistical significance of data in compensation studies, this Member would have concluded that a zero increase should have been made to the REO rates in this case. This would have been the result had the majority utilized the total of compensation survey data (evidence) presented to the Board.

F.T. Collict

F.T. Collict

March 5/93

Date

WAGE DISPUTE PURSUANT TO ARTICLE 5.8.1

REAL ESTATE OFFICERS 1, 2 AND 3

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION

- AND -

THE CROWN IN RIGHT OF ONTARIO

DISSENT OF UNION NOMINEE

In the Chair's award as found on page 13, he notes that in the two external surveys carried out by the parties, there were five common comparators. Those comparators justified a 9.4% increase. Where the parties have found common ground and agreement it makes sense to make this the basis of the award.

Yet, the Chair without explanation or justification asserts:

> "On balance, however, we conclude that the job descriptions used by the employer more closely approximate the work performed by the REO 2. As a result, the increase must be less than just the five common comparators.
>
> On that basis, and on the basis of oral submissions made during the hearing and on the basis of the findings of the G.S.B., we find that an increase of 5.3% to the REO 2 wages effective December 13, 1990 would be most appropriate under the circumstances."

Turning first to the G.S.B. findings, it appears to me that it runs completely counter to the Chair's conclusion of favouring the Employer's job description. At page 4 of this award, in quoting from the G.S.B. decision, it states:

> "It is clear that the Grievor is clearly not a REO 1 or REO 2, insofar as his duties and responsibilities vastly exceed the ambit of those class standards." (page 4)

What surprises me is that in having accepted this conclusion of the G.S.B., the Chair in spite of this, proceeds to accept the Employer's survey of jobs.

Further, the Chair accepts the G.S.B.'s findings (as indicated at the bottom of page 4 of the award) that the grievor does not fit well into the REO 3 category. In essence, the G.S.B. award finds that the best fit for the working level of the Real Estate Officers would be at the REO 4 and possibly REO 5 level. However, these levels are out of the bargaining unit and reserved for management positions. It is based on these findings of fact, that the Union produced external job comparators of positions equal to the REO positions, but which are considered supervisory.

Even though these comparators are not disputed by the Employer as being accurate (although contested because they are supervisory) the Chair disregards these comparators without explanation of how they diverge from the REO job. After all the G.S.B. identified Management REO positions as being the best fit for these jobs. As stated in the Catherwood (332/89) decision and as quoted by the Chair on page 6 of this award:

> "Of the REO 4, 5 and 6 classification, we may have been able to fit into one of those classifications. In that we do not have that option, we must find that no classification that is a proper fit for the grievor exists."

Based on these G.S.B. findings, I am perplexed how the Chair, in this decision, rejects out of hand those external comparators that the Union has identified just because the Employer won't include them in its own survey based on a criticism that some of the Union's comparables are supervisory or contain a supervisory function. To accept the Employer's view is in my respectful opinion a rejection of the G.S.B.'s findings without our Board receiving any contrary evidence.

Instead, having rejected the Union comparables, the Chair proceeds to give complete support to Employer chosen external comparators not contained in the Union survey.

These comparables are:

Government of Canada
Go Transit
City of London
City of Sudbury
Regional Municipality of Niagara

Without question, each of these positions cited by the Employer pay less than the OPS Real Estate Officer 2 position. To meet these comparators it requires a pay cut to the REO 2. Surely this Board should be very cautious in accepting an argument that the essence of the G.S.B. decision was that the REO 2 was overpaid in working beyond his Class Standard and that a lower wage rate was appropriate.

As far as the specific Employer comparables, it is clear to me that they are either unreliable, improper comparables or in the end isolated examples of a small unrepresentative labour market.

The Federal Government comparator chosen by the Employer is simply incorrect. Two federal positions can be identified (see appendix II of the dissent). One is a Property Agent. The other is the Senior Property Agent. When these are compared to the REO 2 class standard (Appendix I of the Dissent) it is clear that the Property Agent position relied upon by the Employer is no match for the REO 2 class standard. Instead, it is the Senior Property Agent that is closer to being a comparable. That position pays 9.9% more than the REO 2 job.

As to the Property Appraiser/Negotiator position with the City of London, it is a lesser position. It deals with a smaller area of responsibility. It has no responsibility for Leasing. This position is supervised by a Manager of Property which itself is the more likely comparator to the REO 2 position.

The City of Sudbury position is that of a Property Administration Officer. It has fewer responsibilities and less areas of expertise. It is a junior position to the REO 2. It is not a match.

The Regional Municipality of Niagara position is that of a Property Officer. That position reports to the Properties Supervisor. That senior position is the likely comparator to the REO 2 as found in the Catherwood (332/89) decision (page 6 of the award).

The final Employer comparator is that of a Realty Service Officer with Go Transit. This is a one person classification. Given the limited functions and lack of variation it escapes me how the Chair can give any weight to this Employer comparator.

In the result, I must dissent from the Chair's award. I would have awarded, the common, shared, parties average comparison that yielded a 9.4% increase.

DATED AT TORONTO, this 7th day of April, 1993.

Brian Switzman

Brian Switzman
Union Nominee

Ontario

Civil
Service
Commission

CLASS STANDARDS

APPENDIX I

Category **ADMINISTRATIVE SERVICES**	Group **PROPERTY ASSESSMENT AD-06**
Series **REAL ESTATE OFFICER**	Class Code 01002

REAL ESTATE OFFICER 2

This class covers the full working level positions which provide comprehensive real estate services in an area of specialization such as appraisal, negotiation, acquisition, marketing, expropriation, sales, leasing and management of a broad range of real property. They may conduct special studies and recommend policies, programs and strategies to senior management.

Characteristic Duties:

Employees in this class work with considerable autonomy and assume responsibility for a range of projects of varying complexity. Responsibilities are focused on a respective area of specialization such as the marketing of multi-year sales of provincial land holdings, conducting comprehensive appraisals of property value for acquisition, sale, or land use assessment, co-ordinating negotiations and establishing supportable terms for the purchase or transfer of property, or the management and co-ordination of lease negotiation and administration projects.

Typical duties may include 1 the investigation, analysis and determination of project parameters; 2 establishing client needs; 3 analyses of such factors as market conditions, values and trends, land use mix; 4 identifying technical issues such as easements, access, or expropriation and/or environmental or other impacts; 5 negotiating and customizing terms and conditions of lease, acquisition, or sale; 6 ensuring the proper and timely preparation of legal documents; 7 resolving issues concerning the respective obligations of lessors and lessees; 8 appraising leasehold interests in real property; 9 negotiating and implementing land assembly purchases for various government programs; 10 planning and developing marketing programs; 11 assessing market potential and identifying land development potential; 12 promoting and implementing land development strategies; 13 managing a portfolio of properties awaiting planned usage, involving arranging for lease and co-ordinating property maintenance; 14 conducting studies relating to leasing, acquisition, marketing, interim land use and 15 co-ordinating information to present extensive analysis of market and financial information; 16 overseeing specific services provided by contractors/consultants on a project basis to ensure service is provided in accordance with established parameters and timeframes; providing technical guidance to Real Estate Officer 1's.

Employees maintain contacts with clients and conduct presentations to clients and other involved parties, such as municipal, provincial, and federal officials, solicitors, consultants, contractors, and property owners.

Effective Date	Issued	

Civil
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Commission
Ontario

CLASS STANDARDS

Category **ADMINISTRATIVE SERVICES**	Group **PROPERTY ASSESSMENT AD-06**	
Series **REAL ESTATE OFFICER**		Class Code 01002

Knowledge and Skills:

The performance of this work requires a thorough knowledge of real estate practices, real estate law and marke conditions, as well as of the principles and practices relating to a realty specialty such as appraisal, leasing, sales, land marketing, negotiations, property management, and expropriation.

Work also requires a comprehensive knowledge of relevant legislation affecting property use and its valuation, such as the Planning Act, the Expropriations Act, the Environmental Assessment Act; the Public Transportation and Highway Improvement Act, the Municipal Act. Thorough understanding of the policies and procedures of ministries and other levels of government with property interests, and knowledge of technical operational skills, e.g. knowledge of construction trades, building practices and systems, computer and ministry software programmes and electronic or mechanical equipment related to the work. Ability to read and interpret legal, engineering and architectural plans.

In some positions where property management is a parallel focus to the leasing of properties awaiting planned usage, a sound knowledge of leasing and appraisal are coupled with an in-depth knowledge of property administration. This also requires a sound knowledge of The Landlord and Tenant Act, the Residential Tenancies Act and related legal requirements such as Writs of Possession, Writs of Seizure and Sale and statutory notices.

To effectively co-ordinate a diverse range of projects of varying scope and complexity, employees require strong planning, organizational and analytical skills together with strong negotiation, mediation, communication and interpersonal skills. A high degree of tact and diplomacy is essential. Strong conceptual and analytical skills are used to identify potential impacts of courses of action, and to evaluate program results.

Judgement:

Judgement is required in representing the province in negotiations with property owners, real estate brokers, city/municipal/federal bodies, with solicitors, landlords, lawyers to effect settlements that are fair and equitable to the parties. Judgement is also exercised in formulating approaches to projects, to ensure client needs are clearly articulated, to assess potential impacts of land use on community values to identify any legal or technical concerns. Contentious problems or issues are referred to a project leader or supervisor for resolution. As agreements are legally binding, sound judgement is used in preparing proper documents and in ensuring their timely disposition. Judgement may also be used to ensure the accuracy and comprehensiveness of research and that all technical, legal, financial, social and environmental impacts have been considered in the review process.

Category	Group
ADMINISTRATIVE SERVICES	PROPERTY ASSESSMENT AD-06

Series	Class Code
REAL ESTATE OFFICER	01002

Accountability:

Employees are accountable for providing real estate services from initial research and analyses, through negotiation to project completion and ongoing portfolio administration and management. Negotiated leases, sales, or purchases are carried out within certain time and dollar limits but with accountability to achieve the best possible terms consistent with the principles of fairness and equity. Depending on the nature of the work performed, employees may be accountable for: the comprehensiveness and quality of analyses of market conditions, trends, and alternatives; for identifying and resolving technical concerns and for assessing contingency factors such as costs incurred in purchasing/leasing properties that would involve high damage costs, long term maintenance, future damage claims, or negative environmental impact for determining and coordinating implementation of maintenance requirements for properties awaiting planned usage. Employees are accountable for compliance with administrative processes, real estate advisory services provided to clients, and legal documentation subject to review. They may also be accountable for ensuring that all analyses, e.g., of market trends, of appraisals of leasehold interest, of the long-term availability of space, land required, land use, or land potential, and the recommendations deriving from these analyses, are viable and accurate for program planning purposes.

Errors in assessment of market conditions, in appraisal valuation, or in negotiating settlements and sales can result in financial loss for the province and could affect the value of adjacent properties. Errors in the terms of agreements or settlements can have major implications in terms of potential litigation. Recommendations for marketing strategies, interim land use or leasing options form the basis for decision-making; errors in analyses can have significant adverse effects on government programs. Poor judgement in dealing with property owners and in ongoing working relations with clients, with officials of other governments, with members of the business sector and community groups could adversely affect the credibility of government programs.

GOVERNMENT of CANADA

Appendix i

POSITION SUMMARY - PROPERTY AGENT

Under the general direction of the Senior Property Agent, (1) conducts studies of the real estate market relating to the cost of acquisitions by purchase, lease, sale and other means, of the possibility of the need for expropriation, of the range of rental rates the client could expect to receive for property to be let, and of other related matters; (2) negotiates agreements with property owners relating to a wide variety of acquisition and disposal interests and actions; (3) coordinates the progress, cash flows and funding requirements of assigned projects; (4) appraises various property interests; (5) assesses and negotiates settlements for damage claims; (6) obtains necessary agreements, licenses, permits, approvals, Orders-in-Council and consent and from other levels of government, or other federal departments and agencies; (7) implements the expropriation process whenever it is necessary to acquire property by means of the powers granted under the Expropriation Act; (8) performs other related duties as required.

POSITION SUMMARY - SENIOR PROPERTY AGENT

Under the general direction of the Chief, Acquisition and Disposal, (1) conducts studies of the real estate market relating to the cost of acquisitions by purchase, lease, sale, lease-purchase and other means, of the possibility of the need for expropriation, of the range of rental rates the client could expect to receive for property to be let, and of other related matters; (2) manages the acquisition and disposal of a wide variety of real property interests, including negotiations with private and public sector property owners; (3) manages and coordinates the progress, cash flows and funding requirements for any type of real property; (4) manages lease-purchase projects; (5) appraises the value of various property interests in any type of real property; (6) assesses and negotiates settlements for damage claims; (7) obtains necessary agreements, licences, permits, approvals, Orders-in-Council and consents from private owners, other levels of government, or other federal departments and agencies; (8) manages the expropriation process whenever it is necessary to acquire property by means of the powers granted under the Expropriation Act; (9) supervises officers and support staff; (10) performs other related duties as required.

Ontario Public Service
Labour
Relations
Tribunal

Fonction publique de l'Ontario
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T/0048/91

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Transportation Design Technician)

Applicant

- and -

the Management Board of Cabinet
(Ministry of Transportation)

Respondent

BEFORE:	G. Charney	Vice-Chairperson
	L. Robbins	Member
	F. Collict	Member

FOR THE UNION:
L. Robinson
Research Officer
Ontario Public Service Employees Union

FOR THE EMPLOYER:
K. Brown
Staff Relations Officer
Management Board of Cabinet

HEARING:
December 16, 1992
February 17, 1993

INTRODUCTION

This Board of Arbitration was established to resolve a dispute over wages for the new classifications for Transportation Design Technicians (TDT's) and Senior Transportation Design Technicians (STDT's) in accordance with Article 5.8.1 of the collective agreement. Article 5.8.1 provides as follows:

> When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration.

The parties have agreed to a new class standard for TDT's as follows:

> Employees who assist in the production of project appraisals, route selection studies, preliminary designs, detail designs, final contract drawings, estimates and tender documents for transportation systems projects. Projects include highways, airports, public transit and inspection stations. Employees review the work of other staff and consultants to ensure projects are accurate, complete and conform to Ministry policies, procedures, technical standards and regulations.

The parties have agreed to a new class standard for STDT's as follows:

> Employees who produce project appraisals, route selection studies, preliminary designs, detail design and

> final contract packages for transportation systems projects. Projects may include highways, airports, public transit and inspection stations. They provide technical advice, guidance and on-the-job training to design staff. Employees also provide technical advice and guidance to consultants in the application of ministry policies, procedures, technical standards and regulations. They review submissions from developers and external agencies for compliance to ministry requirements.

This dispute arose as a result of a grievance initiated by employees classified as Technician 2 Road Design, now TDT's, which eventually came before the Grievance Settlement Board which issued its Award on March 7, 1990 affecting the TDT's. *OPSEU (McIntyre et al.) and the Crown in Right of Ontario (Ministry of Transportation) (D. Fraser)*. The Board found at page 14, among other things,

> "In our opinion, therefore, the tasks of planning and preliminary design, and the operation of computers and particularly of the SD Update program, reflect a significant level of duties and responsibilities not contained in the class standard for Technician 2, Road Design."

In result, the Board accordingly directed the Employer to find or create an appropriate class standard for the grievers.

Employees classified Technician 2, Municipal Engineering, now STDT's, filed a grievance dated July 5, 1990. This grievance came before a different panel of the Grievance Settlement Board which issued its Award on August 2, 1991. *OPSEU (Campsall) and the Crown in Right of Ontario (Ministry of Transportation) (Verity)*, Grievance Settlement Board 1655/90. At page 15 of that Award, that Board said,

> "This is the appropriate case to order that the employer find or create a proper classification for the grievor. Accordingly, the employer shall reclassify the grievor within 90 days of the release of the decision....".

Early in 1992 the parties agreed to a new class standard for both TDT's and STDT's and the new classification was made effective by the Civil Service Commission as of December 16, 1991 for STDT's and January 28, 1991 for TDT's.

The parties could not agree to a new salary rate but they have agreed that the wage rate for both of them should be determined by the same Board.

Instead of analyzing the class standards and trying to determine from those standards what the differences are, it would be more appropriate to analyze the Awards and submissions to see what different work they do and how that has changed over the years.

To deal first with the TDT's and with the McIntyre decision and the evidence, there are a number of areas where there has been a significant change:

1. The computerized work of the employees (cited earlier). This is not to say that this Board believes that because something is reduced to a computer it is necessarily more complex, in fact, sometimes it is simpler but in this case it is clear both from the submissions and from the McIntyre Award that a much higher degree of skill is required.

2. There was an increase in duties when two positions were consolidated into one best fit position as a result of an amalgamation. What happened here in fact was that the TDT position was divided

into two where the employees did not overlap. They used to have a group that did planning and preliminary design, and a second group that did detail design. The skills were slightly different. What in fact happened was that the planning and preliminary design stages essentially provided the necessary background information and choice of approach for the third stage which was detail design. Detail design involves the actual design of the specific project based on the two prior stages. These two positions were amalgamated in 1972. Prior to that the work of planning and preliminary design had been done by a functional planning section attached to the engineering and right-of-way office. They had been classified as Drafter 2. The detail design had been done by a separate road design section and the employees who did that were classified as Technician 2 Road Design. Their salaries were identical. When they were amalgamated it was decided that Technician 2 Road Design was the best fit for the combined group.

The Employer now had a group of employees who became cross-trained and as a result were capable of doing both jobs. They were used across both areas and in result the Employer gained valuable flexibility.

3. General increase in the work levels due to more sophisticated techniques.

The Board examined the various comparators submitted by the Employer and by the Union and in each case there were of course some areas where it was clear that the employees should get an enormous increase or should get no increase at all depending on whose comparators one was looking at. It is difficult to try to fit oneself in in a reasonable way to comparators because everyone tends to cherry pick. There is no question that there are some people doing work not terribly dissimilar from what these employees are doing and are getting paid considerably more money and are classified quite differently. It is equally true that a similar group is making almost the same amount of money and again, doing similar work to the employees.

When I say similar work I mean in the broadest sense, work that apparently requires the same kind of skill, knowledge and ability.

The Board gave due consideration to the fact that their jobs were amalgamated, that there is a greater skill level due to the use of computers in these jobs and that there is a general increase in the work and in result, the Board awards the TDT's a wage increase of 10%.

The STDT's are in a slightly different position. In the first place, the disparity in the wages between the TDT's and the STDT's is in the neighbourhood of 21%. Considering that most TDT's are promoted to STDT's and considering that the TDT's do a lot of work on their own this gap is larger than is normal in the Ontario Civil Service.

Secondly, the STDT's never had an amalgamation of jobs. The change in their duties over the years has not been as dramatic as for the TDT's in that there was no merging of classifications. There has been an increase in their skill level because they are now required to use and understand the computer system in their work with the TDT's and in their supervision of the TDT's and in addition, there has been a general increase in the level of work they do.

It is clear that their pay rates should be between a Technician 3 and a Technician 4. In the Campsall Award Arbitrator Verity says in effect that he doesn't agree with the Employer's argument, that is a Technician 3 class standard does not fully contemplate the grievor's actual duties and responsibilities and fails to recognize his responsibility in dealing with design complexities. However he says,

> "we would agree with the employer's argument that the grievor does not qualify for the Technician 4 Road Design class standard."

The Board awards an increase of 3.5% for the STDT's.

This Board shall remain seized if there is any difficulty in implementing this Award.

DATED at Toronto, this 28th day of April, 1993.

Gerald J. Charney, Chairperson

I dissent

"Larry Robbins"
Larry Robbins, Union Nominee

I dissent

"F.T. Collict"
F.T. Collict, Employer Nominee

IN THE MATTER OF AN ARBITRATION
UNDER THE CROWN EMPLOYEES' COLLECTIVE BARGAINING ACT
IN THE MATTER OF WAGE RAISE PERTAINING TO
REVISED STANDARDS FOR THE TRANSPORTATION
DESIGN TECHNICIAN AND THE SENIOR TRANSPORTATION
DESIGN TECHNICIAN

BETWEEN:

THE CROWN IN RIGHT OF ONTARIO
(MINISTRY OF TRANSPORTATION)
(the "Employer")

- AND -

ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(OPSEU)
(the "Union")

PARTIAL DISSENT

I concur with the Chairperson's Award of a 10% increase for the TDT's. However, I must dissent from that portion of the Award concerning STDT's, which was to award an increase of 3.5%.

The Chairperson bases the lower award for STDT's in large part on the view that the STDT's never had an amalgamation of jobs and that their change in duties over the years had not been as dramatic as was the case for TDT's. With the greatest of respect, this is simply not true.

The amalgamation of planning and preliminary design with detail design was an organizational change, which, as I understand, applied both to TDT's and STDT's. The Union advised us that the changes in the two classifications corresponded to each other.

Moreover, the Employer never argued that there had been no amalgamation in the case of STDT's. Therefore, the premise of the Award for STDT's is incorrect.

The real difference is that in the case of STDT's the classification had been pegged to an atypical class standard of Technician 2, Municipal Engineering (atypical). That class standard bore very little resemblance to the job of the STDT's. As a result the Campsall Award doesn't give us as much guidance with respect to the change in job duties for STDT's as the MacIntyre Award does for the TDT's. However, that doesn't mean that a similar increase in level of duties hasn't occurred.

For these reasons, I would have awarded an increase of 7% for the STDT's. This would still have resulted in some narrowing of the differential between the TDT's and the STDT's, but only by 3%. This is actually in line with the positions of both Parties.

DATED at Toronto, Ontario this 23rd day of April, 1993

Larry Robbins
Union Nominee

DISSENT

Re: Interest Arbitration

A: Transportation Design Technician
B: Senior Transportation Design Technician

This Member is not in agreement with this award for the various reasons set out below.

A: TRANSPORTATION DESIGN TECHNICIAN (TDT)

As stated at page 4 of this award, an analysis of the MCINTYRE decision (G.S.B. #1230/86, etc.) indicates that the TDT duties have expanded and that there has been an introduction of computer applications to their tasks. On these matters, there is agreement.

Based upon the above, therefore, and an analysis of the comparators presented in evidence, this Member would have awarded a 7% increase, as opposed to the 10% awarded.

B: SENIOR TRANSPORTATION DESIGN TECHNICIAN (STDT)

A review of the STDT position leads one to a different conclusion. At page 6 of the award, the following is stated with reference to STDT's:

> "...the disparity in the wages between the TDT's and the STDT's is in the neighbourhood of 21%. Considering that most TDT's are promoted to STDT's and considering that the TDT's do a lot of work on their own, this gap is larger than is normal in the Ontario Civil Service."

A portion of this gap resulted from a Memorandum of Settlement dated November 25, 1987 (ref. G.S.B. #1206/86) which provided a reclassification of the STDT's to the Class Allocation of Tech. 2 - Municipal Engineering (Atypical). The reclassification also provided to the STDT's a 7% salary increase which accounts for approximately one third of the disparity between the TDT and STDT.

More importantly however, is the fact that this 7% increase to the STDT's and their reclassification to Tech 2 - Municipal Engineering (Atypical), contemplated duties set out as follows:

> "• selecting, in cooperation with the Computer Systems Officer, appropriate computer programs for all phases of the various projects such as cross sections, grading, granular quantities, calculations of horizontal and vertical alignments and detailed calculations of intersections and interchanges, and various miscellaneous programs for drainage design and construction reports;
>
> • preparing necessary input data for the computer programs and interpreting the computer output with regards to accuracy and necessary revisions;
>
> • preparing updates, corrections, and modification in a "hand-on" mode to achieve the desired results from the various computer programs for use by Planning and Design Section and Construction Office;"
>
> (underscoring added)
> (p. 2 - Position Specification, "Senior Technician", Feb. 11, 1988)

In this same job description at page 3, it is stated that the skills and knowledge required to perform this position at the full working level is, in part,

> "A thorough and working knowledge of the various

> computer programs available and the ability to operate an electronic computing facility on Planning and Design projects."

Notwithstanding all of the above, however, and the fact that the STDT's already had received an increase of 7% for performing the above-noted duties and being required to have the skills and knowledge to perform them, (as per position reclassification to Tech 2 Municipal Engineering (Atypical), the majority award in this subject case has awarded an additional 3½% for the following reasons, stated at page 6 of this award.

> "There has been an increase in their skill level because they are now required to use and understand the computer system in their work with the TDT's and in their supervision of the TDT's and in addition, there has been a general increase in the level of work they do."

An analysis of the comparators and the evidence does not reveal to this Member, an increase in the level of work performed by the STDT's; and certainly they are not entitled to a further increase in rate of pay for computer responsibilities for which they already had been rewarded.

Finally, it must be mentioned that a zero increase to the STDT's would have left them, in terms of rate of pay, approximately mid-way between the pay ranges for the Technician 3 and Technician 4. Given the CAMPSALL award (referenced on page 6, 7 of this majority award), this would not have been an unreasonable finding.

Based upon a 3½% increase to the STDT's, however, they are now within approximately 5% of the Technician 4 level, and are still at a rate approximately 14½% greater than the rate for TDT's.

The Chair noted at page 5 of the award that the gap between the TDT and STDT level is "larger than normal in the Ontario Civil Service". In the opinion of this Member, a gap of approximately 14½% is still unusual between employee and group or project leader.

In view of all of the above, this Member would have found, in the context of the existing and new class standards, positions specifications and comparators presented in evidence, and established pay ranges, that TDT's should have been awarded a 7% increase and that STDT's should have received zero.

F. T. Collict

F.T. Collict

April 22/93

Date

Ontario Public Service
Labour
Relations
Tribunal

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T/0061/91

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Case Worker, Homes for Special Care)

Applicant

- and -

the Management Board of Cabinet
(Ministry of Health)

Respondent

BEFORE:	B. Keller	Vice-Chairperson
	L. Robbins	Member
	F. Collict	Member

FOR THE UNION:
J. Miko
Job Evaluation Officer
Ontario Public Service Employees Union

FOR THE EMPLOYER:
L. Barber
Staff Relations Officer
Management Board of Cabinet

HEARING:
November 10, 1992
March 31, 1993

DECISION

This is an arbitration pursuant to section 5.8.1 of the Collective Agreement with respect to Working Conditions and Employee Benefits. This arbitration concerns the setting of the salary range for the Case Worker, Homes for Special Care class.

The class standard was approved by the Civil Service Commission on January 8, 1991 following a "Berry" ruling by the Grievance Settlement Board in June 1990. The parties met to negotiate wage rates without success. Mediation was also unsuccessful. The matter was then referred to this Board for determination.

The Case Worker is in the Social Programs Group in the Administration Services Category, which is one of nine categories in the Ontario Public Service. This category includes 140 classes and covers approximately 8,385 employees.

When the grievance was filed, Case Workers were classified as Field Worker 1. During the grievance process the position was reclassified to the Social Worker 1 class. According to the GSB decision in this matter:

> Bryan Neale, . . . stated that he felt that the existing classification of Field Worker I was inappropriate because of the extent to which the duties and responsibilities of the position had expanded. He stated that he examined the Social Worker series as well as the Rehabilitation Officer series and that neither of these series fit the position "hand in glove". He stated that he felt the Rehabilitation Officer series was inappropriate because it appeared to be designed to encompass positions which primarily involve vocational rehabilitation. He was also concerned about the appropriateness of the Social Work classification because of the reference to a social work degree which is contained in that series.
>
> Mr. Neale stated that he inquired as to how similar positions were classified within the Ministry and identified St. Thomas Psychiatric Hospital, Hamilton Psychiatric Hospital and Kingston Psychiatric Hospital as having positions similar to the case worker position at London Psychiatric Hospital. The source of his information with respect to these positions is the job specifications for these positions. While Mr. Neale acknowledged that there were some differences between these positions and the positions of the HSC case workers at London Psychiatric Hospital he stated that because these positions had been classified as Social Worker 1 he felt it appropriate to classify the HSC case workers at London Psychiatric Hospital in the Social Worker 1 classification as well. He acknowledged that the class standards for the Social Worker 1 classification contemplate that it is an entry level position.

In spite of the reclassification, the grievance was pursued and upheld by the GSB. The ratio of that decision states, in part, as follows:

> After a careful review of the evidence and the submissions of counsel it is our conclusion that the case workers in the HSC programme do not properly fall within the Social Worker 1 class standard. As the preamble to the Social Worker series indicates, it is intended to apply to professional social workers. The Social Worker 1 classification is the entry level position which is to provide training and experience under close supervision for newly graduated social workers. The experience and responsibilities of the HSC case workers are such that they do not correspond with the general tenor of the class standards for the Social Worker 1 classification. With the exception of the reference to the provision of counselling and the utilization of community resources the description is simply not applicable to the case worker position.

The new class standard reads as follows:

Ontario
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Commission

CLASS STANDARDS

Category Administrative Services	Group AD-09 Social Programmes	
Series Case Worker, Homes For Special Care		Class Code

CASE WORKER, HOMES FOR SPECIAL CARE

This class covers positions of employees who ensure clients admitted to the Homes for Special Care Programme are thoroughly assessed, receive appropriate counselling, ensure adequate care and supervision is given and facilitate opportunities with community agencies and other service providers, aimed at developing clients' capabilities to their optimum level. They screen prospective home owners/operators and assess licensed homes against established standards and legislative requirements, carry out related administrative duties, and promote community interest.

Working under general supervision, these employees provide rehabilitative, supportive and problem-solving counselling, emphasizing basic living skills, to clients in private homes and nursing homes. They intervene in crisis situations when required to deal with emotional or behavioral emergencies and provide updated assessments of clients on a regular basis. They may, in conjunction/consultation with community resources, develop social, recreational, daily living skills and transitional employment plans or programmes in aid of the clients' successful reintegration in the community. They advocate on behalf of clients to enable protection of their rights and assist clients to obtain legal representation as necessary. They also help clients obtain suitable accommodations and after care services on discharge from HSC programmes.

They screen prospective home owners/operators or those applying for licence renewal and inspect licensed facilities. They also provide technical guidance, information and support to home owners/operators and their staff to ensure clients' rights are respected and prescribed standards of care are adhered to. They also provide supportive counselling, information and support to relatives and volunteers.

They initiate and maintain effective channels of communication with community agencies, community health care services and community resources to ensure that services appropriate to clients' needs are being provided and maintained. They may prepare and present educational sessions to explain HSC programme to hospital staff and to community groups.

They perform a variety of administrative duties relating to: the admission, progress and egress of clients in the programme; the approval and processing of client purchases; the approval of short leaves of absence. They prepare and submit client progress and related reports and monthly statistical reports.

Effective Date Jan. 8, 1991	Issued	Page 1 of 2

Category Administrative Services	Group AD-09 Social Programmes
Series Case Worker, Homes For Special Care	Class Code

Skills and Knowledge

Work requires demonstrated knowledge and skills in assessment, interviewing and counselling. A thorough knowledge of relevant sections of homes for special care and mental health legislation and of program policies and procedures. Good general knowledge of community reintegration, community resources utilization and case management. Ability to assess residences against established standards. Ability to intervene in crisis situations. Good communication skills; ability to prepare and present educational material and written reports. Good problem solving and interpersonal skills to deal effectively with clients, case management team, community representatives, home owners/operators, peers and other community service providers.

Effective Date Jan. 8. 1991	Issued	Page 2 of 2

The Board's understanding of the nature of the position was enhanced by the GSB's reiteration of the duties in its decision:

> The evidence of Ms. Anderson with respect to her duties is reflected, by and large, in the position specifications. Ms. Anderson testified that she has also provided training for home operators and their staff at their request. As well, she has provided training with respect to the function of the HSC programme for psychiatric nursing assistants training at London Psychiatric Hospital. In addition, she has been involved in educational programmes for the communities in which her clients live. She has also been involved in the development of social, recreational and transitional employment programmes where her clients have a need for them. The case workers are available in the event of a crisis on an on call basis although the on call system is not "official". The case workers also are involved in assisting clients obtain legal representation and play an advocacy role on behalf of their clients with respect to matters such as obtaining services. Ms. Anderson stated that while the orientation of the HSC programme was originally to provide housing, rehabilitation is now being provided to some extent by the case workers. Presently, approximately three clients per month are able to move to a programme that requires less support or to independent living. Ms. Anderson stated that approximately 25% of her clients have potential for employment and that she is involved in vocational rehabilitation on their behalf but that the needs of her other clients relate more to basic living skills.

The union's argument was based on a review of the class standard and position specification and a review of three internal comparators - Nurse 3 General, Social Worker 2 and Welfare Field Worker.

With regard to a comparison of the old and new class standards the union submits, following an analysis of the two that:

> "In short, the class standard of the new Case Worker is far more complex and demanding and requires significantly more skills and broader knowledge than the Social Worker 1. Accordingly, if the appropriate salary range is to be judged on a comparison of the two standards, Case Workers definitely should be paid a great deal more money than Social Worker 1."

In its review of the Case Worker position specification with that of Nurse 3 General, the union submits that there is "amazing similarity" in the duties and responsibilities. It was submitted that the nurses are not functioning in the traditional mode in a hospital setting but out working primarily in the community. The union also indicated that the Case Worker at London and the Nurse 3 Generals at Whitby share significantly responsibility for supervision of the operator and the staff in Homes for Special Care. Finally, the Board is told that:

> "Perhaps the only distinction that can be made about

> these two jobs is that the incumbents approach the job from two different disciplines".

The next comparator is Social Worker 2, at Lakehead Psychiatric Hospital in Thunder Bay. The position specification is generic and covers all sixteen social workers employed in different capacities. The union compares the two position specifications in detail and invites the Board to find a significant degree of over-lap. Reference is also made to the evaluators comments on the position specification:

> "Position requires the undertaking of functions characteristic of this class; problem assessment; interviewing; counselling; case management; and crisis intervention."

The result then, we are told, is that the employer had accepted that the Case Worker position was a social worker one but had erred in determining that it was at the 1 level, as that is an entry level position and the Case Worker position is not an entry level job.

The last comparator was Welfare Field Worker. Although the incumbents of that position do not work specifically in a

Home for Special Care Unit, the union submits that there are substantial similarities in some of the skills and responsibilities. In particular the functions of comforting, counselling, assessing and evaluation skills are similar to Case Workers. They also deal with clients in distress, determine eligibility for a program, do follow-up and discharge long-term rehabilitative initiatives to get people back on their feet.

On the basis of its submissions the union seeks a 22% increase at the maximum of a five-step wage grid based on the rate for Social Worker 2 which it suggests is the best comparator. As an alternative it proposes a 19% increase which represents the median percentage rate between the Nurse 3 General and Welfare Worker 2.

The employer commences its submission by pointing out that when the grievance was originally filed by the Field Worker 1, a decision was taken to reclassify the position at Social Worker 1, which represented an increase in excess of 20%.

An internal comparison was made by the employer with other positions as the Ministry has other similar positions throughout the Province where there is a Homes for Special Care Program. Although organizationally in the majority of cases the Homes for Special Care program forms part of the Social Work department of the hospital, there are exceptions (the HSC supervisor reports to a Chief of Social Work). In North Bay and Lakehead regions where there is not enough demand to warrant the delivery of the HSC program as a distinct program, Homes for Special Care functions are integrated with the work of regular Social Workers. In Penetang, where there is a different design, positions are classified as Field Workers 2 and report to the Chief Social Worker. In Whitby, Homes for Special Care is considered a nursing program and these positions report to a management nurse. They are classified as Nurse 3 General because they are required to administer and monitor medication and discharge nursing care plans.

The employer then submits that the Caseworker, Homes for Special Care standard describes work which is similar to positions involved in the Homes for Special Care program which are classified as Social Worker 1s. In support of that submission the employer conducted a detailed analysis demonstrating where the responsibilities are the same or similar, what the common features are, and what the variable features of the position are. The employer concludes by stating:

> "It is the Employer's contention that these positions (classified as Social Worker 1s) are valid comparators for the Case Worker, Homes for Special Care due to the great degree of similarity between the duties and responsibilities, as well as skill and knowledge requirements".

In a further submission the employer pointed out that the GSB had considered the class standards of Social Worker 2 and Nurse 3 General and for reasons outlined in the award rejected them. This Board is invited to do the same. The employer then stated that:

> "A comparison of the former Social Worker 1 class and the new standard will serve to show that, in spite of the Berry ruling by the Board, the Social Worker 1 class did not have an adverse impact on the grievors in terms of the comparable factors of skills, knowledge and responsibilities".

A comparison chart then followed:

The following chart is a comparison of the class standards for Social Worker 1 and Case Worker, Homes for Special Care.

Social Worker 1 (and Preamble)	Case Worker, Homes for Special Care	COMMENTS
• This class series covers positions in the field of social welfare which involve the provision of professional social work services in provincial programs of social development, adjustment prevention and rehabilitation.	• This class covers positions of employees who ensure clients admitted to the Homes for Special Care Programme are thoroughly assessed, receive appropriate counselling ensure adequate care and supervision is given and facilitate opportunities with community agencies and other service providers, aimed at developing clients' capabilities to their optimum level.	• Program Responsibilities - greater in Social Worker than in Case Manager HSC. Social Worker directly responsible for provision of professional service whereas the Case worker H.S.C.facilitates or ensures service or care is provided through others.
• Employees use one or more social work methods to assess, treat or prevent the underlying, causes of social dysfunctioning, both personal and environmental. They develop and implement appropriate social treatment plans and evaluate results.	• Working under general supervision, these employees provide rehabilitative, supportive and problem-solving counselling, emphasizing basic living skills, to clients in private homes and nursing homes.	• Patient Treatment Responsibilities - greater in Social Worker than in Case Worker HSC. The Social Worker is directly responsible for the diagnosis and treatment of underlying causes of social dysfunctioning. The Case Worker HSC provides supportive counselling, emphasizing basic living skills.

Social Worker 1 (and Preamble)	Case Worker, Homes For Special Care	COMMENTS
• They conduct interviews, compile case histories, assess problems and recommend supportive treatment. They provide counselling	• They may,in conjunction/consultation with community resources, develop social, recreational, daily living skills and transitional employment plans or programmes in aid of the clients'successful reintegration in the community. • They also provide supportive counselling, information and support to relatives and volunteers. They intervene in crisis situations when required to deal with emotional or behavioral emergencies and provide updated assessments of clients on a regular basis. • They perform a variety of administrative duties relating to: the admission, progress and egress of clients in the programme; the approval and processing of client purchases; the approval of short leaves of absence. They prepare and submit client progress and related reports and monthly statistical reports.	• Nature of Responsibilities - the Case Worker Homes for Special Care has administrative and supportive responsibilities vis-à-vis the client. The Social Worker has professional clinical responsibilities vis-à-vis the client. The compilation of case histories involves a comprehensive psychosocial assessment report which in many instances may form the overall multi-disciplinary treatment program. The Social Worker 1 therefore, has very strong clinical responsibilities which are not present in the Case Worker HSC.
and utilize appropriate community resources to meet clients' needs.	• They advocate on behalf of clients to enable protection of their rights and assist clients to obtain legal representation as necessary. They also help clients obtain suitable accommodations and after care services on discharge from HSC programmes. • They initiate and maintain effective channels of communication with community agencies, community health care services and community resources to ensure that services appropriate to clients' needs are being provided and maintained.	• Similar responsibilities

Social Worker 1 (and Preamble)	Case Worker, HSC	COMMENTS
	• They screen prospective home owners/operators and assess licensed homes against established standards and legislative requirements, carry out related administrative duties, and promote community interest.	• Responsibility not present in Social Worker (administrative in nature).
Supervision		
• This class covers entry level positions of social workers who are gaining casework experience following completion of undergraduate professional education. • Employees receive instruction on departmental programs and policies from a senior social worker who assigns and supervises work. • In all positions at this level, assignments are selected to provide scope for the development of competence. Senior social workers provide professional guidance and review psycho-social treatment decisions.	• Working under general supervision these employees provide . . .	• Although the supervision received by the Social Worker 1 class is initially close, it is decreased as caseload experience is gained. It is therefore a varying factor which proceeds along a continuum, from close supervision to consultation with the supervisor, as the Social Worker becomes fully proficient. In comparison to the constant "general supervision" received by the Case Worker, it can be considered that, overall, this factor is similar.

Social Worker 1 (and Preamble)	Case Worker, Homes For Special Care	COMMENTS
Skills and Knowledge		
• Completion of undergraduate professional education.		• Stronger in Social Worker. Completion of undergraduate degree in Social Work is required. The Case Worker HSC does not require a degree.
• Good knowledge of the principles, techniques and methods of social work and ability to apply them in the work situation.	• Work requires demonstrated knowledge and skills in assessment, interviewing and counselling.	• Stronger in Social Worker
• General knowledge of departmental programs and policies. • (Utilize appropriate community resources to meet clients' needs).	• A thorough knowledge of relevant sections of homes for special care and mental health legislation and of program policies and procedures. Good general knowledge of community reintegration, community resources utilization and case management. Ability to assess residences against established standards.	• Slightly stronger in Case Worker HSC. (Although knowledge of community resources is not specifically mentioned in Social Worker standard it is implicit due to job requirement of utilizing "appropriate community resources to meet client needs".)
• Personal suitability; assist individuals, families, groups, and communities to achieve effective personal development and social functioning; satisfying inter-relationships; • conduct interviews, compile case histories, recommend supportive treatment; provide counselling; satisfying inter-relationships;.	• Ability to intervene in crisis situations. • Good problem solving and interpersonal skills to deal effectively with clients, case management team, community representatives, home owners/operators, peers and other community service providers.	• Due to age of Social Worker class standards "personal suitability" was terminology used to measure skills such as interpersonal skills, problem solving skills, tact, patience and other similar skills and abilities.
	• Good communication skills; ability to prepare and present educational material and written reports.	• Communication skills are stronger Social Worker 1 as they are required to communicate with families, multi-disciplinary teams, compile assessments and formulate recommendations, provide therapeutic counselling.

Finally, the employer conducted an external comparison survey which purports to show that the wage rate is comparable for similar work outside the public service.

In summary the employer submits that the current wage scale, which is the Social Worker 1 wage scale, is appropriate.

In our analysis of this matter, we are considerably assisted by the findings of the GSB, particularly in so far as their comments regarding Social Worker 2:

> We reach a similar conclusion with respect to the Social Worker 2 class standard. This class standard is intended to apply to "qualified social workers" who provide "professional social work services" and"formulate psychosocial diagnoses of the personal and environmental causes of social dysfunctioning". Clearly, it does not encompass the work performed by the case workers in the HSC programme.

On that basis, it is difficult for this Board to accept the proposition of the union that the Case Worker should be paid at the same rate as Social Worker 2.

At the same time, our task-by-task analysis of the Case Worker and Nurse 3 General and Field Worker 2 leads us to the conclusion that comparisons suggested by the union do not justify the increase sought. Specifically with regard to the Nurse 3 General, we again note the comments of the GSB:

> When the duties of the case workers in the HSC unit are measured against the Nurse 3 General class standard it is our view that the necessary correspondence does not exist. The general information with respect to the class series indicates that the positions allocated to that series involve nursing care provided to patients in a hospital setting. Clearly, this is not the kind of work that the grievors are engaged in. The particular class standard dealing with the Nurse 3 General classification indicates that the positions that fall within this classification are those involving supervision of other professional staff in carrying out professional duties as registered nurses. Again, it is our view that the kind of work performed by the grievors does not fall within the scope of this classification.

Having said that, we must bear in mind that the employer, both before the GSB and this Board, has consistently maintained that the functions of the Case Worker and Social Worker 1 are comparable: thus the proposition that the appropriate rate of pay is that of Social Worker 1.

Both the union and the employer offered their own comparisons of

Case Worker and Social Worker 1. Both, obviously, reached different conclusions. On the whole, on the basis of our study of their analyses we are satisfied that the employer's position is more accurate.

However, there are certain factors which suggest to us that it is not sufficiently accurate to justify their proposition that no wage adjustment is required. In particular, we refer to the fact that the Social Worker 1 position is an entry level position. The Case Worker is not. As well, the Social Worker 1, at least at the initial stages of employment, works under close supervision whereas the supervision of the Case Worker is more general. Accordingly, it can not be said that there is the convergence of the two positions as suggested by the employer.

On the whole, as we are satisfied that the two positions are closer than not, we are of the view that the basic rate should be maintained. However, we are equally satisfied that the more senior employees should receive recognition. Therefore we adopt the Social Worker 1 minimum weekly rates but increase the difference between the steps from 3% to 4.5%; in the result the adjustment at the maximum is 6.23%. This results in the following salary scale expressed in weekly rates to be effective January 8, 1991.

$702.80
$734.43
$767.48
$802.02
$838.11

The number of steps in the grid remains unchanged.

We remain seized to deal with any matters resulting from the implementation of this Decision.

Nepean, this 20th day of August, 1993.

M. Brian Keller, Vice-Chairperson

"I Dissent" (dissent attached)
Mr. L. Robbins, Union Nominee

"I Dissent" (dissent attached)
Mr. F. Collict, Employer Nominee

IN THE MATTER OF WAGE RATES PERTAINING TO
REVISED STANDARDS

FOR

CASE WORKER, HOMES FOR SPECIAL CARE

BETWEEN:

THE CROWN IN RIGHT OF ONTARIO
(the "Employer")

- and -

THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION
(the "Union")

DISSENT OF UNION NOMINEE

I have reviewed the Award in this matter, and am unable to join with the Chairperson.

From a review of all the evidence, I find the position in question to be a highly responsible job which falls in a general sense in the social work stream. The position requires assessment, counselling and crisis intervention, and indeed in the position description, it is noted that both administrative and professional duties are expected.

What is noteworthy about this case is that we run straight into the Government's policy of decredentialism. There is no doubt that similar positions are being carried out in a number of different Hospitals by employees with different professional qualifications. In the case at hand, the qualifications have intentionally been made to be generic. For example, there is no specific requirement for either an R.N. certificate or M.S.W. Nevertheless, the individual incumbents may in fact have such qualifications. We were advised that one of the incumbents at the

London Psychiatric Hospital was an R.N., another an M.S.W., while two others had College diplomas. I am most concerned that the policy of decredentialism is being used to allow the Government to get away with a "lowest common denominator" type of salary.

While I agree with the Chairperson that based on the G.S.B. decision, the case was not made out for an increase to the S.W. 2 level, I am still of the view that the salary level should be set well above the S.W. 1 rate. A reasonable result would have placed these employees at approximately the midpoint of the S.W. 1 and S.W. 2 scales. Therefore, I would have awarded an increase of 11% across the board.

DATED AT TORONTO, this 21st day of July, 1993.

Larry Robbins

DISSENT

Re: Case Worker, Homes for Special Care

This Member is not in agreement with the award in this case.

The role of the Board in this interest arbitration case is,

> "...to have the rate (for a new or revised classification) determined by arbitration"
>
> (Article 5.8.1 of C.A.)

The role of this Board is not to "tinker" with a rate established by the Employer.

The Case Worker, Homes for the Special Care position was previously classified as Field Worker 1. A grievance was filed with reference to this classification and it was reclassified to the Social Work 1 class by the Employer in an attempt to resolve the grievance. This resulted in an approximate 20% salary increase to the grievors; - from Field Worker 1 to Social Worker 1. This adjustment did not resolve the grievance, - with the result that the grievance proceeded to arbitration and a Berry order was issued.

In this case, the majority has concluded at page 19, that

> "...we are satisfied that the employer's position is more accurate (than the rate proposed by the Union)"

The majority also states at page 19 of the award,

> "On the whole, as we are satisfied that the two positions (the S.W.1 and the newly established classification) are closer than not, we are of the view that the basic rate should be maintained."

But, the award then concludes,

> "However, we are equally satisfied that the more senior employees should receive recognition"

The result determined by the Board is a 1.5% increase in the steps of the range from 3 to 4.5%; - the final effect of which is to expand the top of the range by approximately 6%.

In the view of this Member, this conclusion is tantamount to "tinkering"; and it is faulty for the following reasons:

1. The fact that the S.W. 1 classification is an "entry" level position to the professional Social Worker series is immaterial in the deliberation of the rate to be set for the subject new classification.

2. The measurement of the relative worth of positions is a highly imprecise and inexact exercise that is fraught with biases and subjective evaluations. Accordingly, to endeavour to identify a 4.5% increase per step as opposed to 3% per step, - thus resulting is a 6% increase at the maximum - is a conclusion that cannot be supported.

3. The Employer carries the responsibility to set the rate for the new classification; and in the absence of compelling evidence to warrant an adjustment to the rate, this Board should not interfere with the Employer's decision.

   In effect, inasmuch as the majority of the grievors in the Case Worker, Homes for Special Care classification are at the maximum of their ranges - the award provides, essentially to all grievors, an increase of approximately 6%. Was this the objective of the award? - or was the objective of the Board to establish the rate for the job?

In summary, the Employer endeavoured to reclassify the grievors to a level which was warranted at the time the grievance was filed originally. This was done and the grievors received a 20% salary increase.

In the view of this Member, the Employer gave the evaluation of the position a reasoned assessment and concluded that the S.W.1 salary range best met the requirements of the new classification. This evaluation was reasonably "in the ball park". - as also was determined by the majority at page 19 of this award. This interest board should not have interfered with this Employer assessment for, as has been stated in so many arbitrations in the past, this results in "management" by arbitration, as opposed to "management" by the Employer. The former is not deemed to be acceptable.

The position of the Employer of no adjustment to rate should have been the conclusion in this case.

F.T. Collict
F.T. COLLICT

August 18/93
DATE

Ontario Public Service
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T/0073/91

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Farm Products Inspector 2)

Applicant

- and -

the Crown in Right of Ontario
(Ministry of Agriculture & Food)

Respondent

BEFORE:	B. Keller	Vice-Chairperson
	B. Switzman	Member
	W. Lobriaco	Member

FOR THE UNION:
L. Robinson
Researcher
Ontario Public Service Employees Union

FOR THE EMPLOYER:
L. Barber
Staff Relations Officer
Management Board of Cabinet

HEARING:
March 4, 1993
May 2, 1993

AWARD

This arbitration concerns the setting of a salary range for the Farm Products Inspector 2 class standard. It arises from a grievance filed by 14 employees in March 1988 claiming that, owing to the changes and additions to their duties and responsibilities, they were improperly classified. On July 30, 1989 the Grievance Settlement Board issued a decision upholding the grievances and issuing a "Berry" Order. A new class standard was drafted and agreed to and made effective February 19, 1991. The parties met subsequently to try to arrive at a rate of pay but were unsuccessful.

The new class standard reads as follows:

(See page 2(a) and 2(b))

There were at the time of the hearing approximately 19 Farm Products Inspector 2. They all work in the Quality and Standards Division of the Ministry of Agriculture and Food.

The work performed by the Inspectors appears to be caught by the position specifications.

(See page 3(a) and 3(b)

The union's argument consisted of three parts. The first was an analysis of the GSB award. The second was a comparison of the new and the old class standards. The third consisted of four internal comparisons.

With respect to the first argument, the union submitted that the GSB made two important and relevant findings of fact: that "the mediation function was significantly highlighted in the old compensation plan covering Senior Inspectors", and that there is "real authority exercised over seasonal staff by the Farm Inspector".

In its second argument, the union analyses, point-by-point the old and the new class standard. It then invites the Board to find that the duties under the new class standard is significantly stronger than under the old.

The union then makes four internal comparisons. The first is with the Fruit and Vegetable Inspector/Variety Identification Specialist. They also work in the Quality and Standard Division of the Ministry of Agriculture and Food and are classified as Agricultural Products Investigation 1 (Atypical). All the employees who actually do the work described in the class standard are in another classification with much higher rates of pay, and all of the employees in the Investigation 1 classification do work which bears no relation to the work described in the class standard. A comparison was done with the appropriate position specifications following which the union submitted that, taking all the relevant factors into account, the two jobs are equal.

Comparisons were then made with Dairy Specialist, classified as Agricultural Specialists 3, in the same Ministry. It was submitted that although a comparison of the job show a difference in detail, the general intent is similar.

A comparison was also made with two less closely related jobs - Environmental Officers and Transportation Officers. Again, the union analyses the positions and submits that they are valid comparators.

Following the above comparisons, the union submits that a wage increase somewhere between 19.1% and 24.6% at the maximum is warranted.

In its submission, the employer too compares the old and the new class standard. They, not surprisingly, reach a different conclusion from the union and submit that comparison shows a great degree of similarity between the former and the new standard but acknowledge that the new standard is slightly stronger. The employer's comparison is reproduced in full below:

(See page 5(a),(b),(c),(d) & (e))

The employer presents comparisons with positions in the Federal Government, New Brunswick and Quebec. It submits that although the OPS rates are higher, the external comparators are somewhat stronger than the new standard of Farm Products Inspector 2.

Finally, the employer submits that an increase to rates of 2% is appropriate.

In our analysis of the submissions, we reach the conclusion that the new standard is more than just a little stronger than the old. This is even demonstrated on the employer's analysis where, in those areas that it acknowledges are stronger, there is a qualitative difference between the weaker and stronger areas. Additionally, the former are less numerous and, for the most part, in functions of lesser importance.

After examining all the comparators submitted by the parties, we are satisfied that it is most appropriate to compare the Farm Product Inspector 2 and the Fruit and Vegetable Inspector/Variety Identification Specialist. The other comparators don't have anywhere near the same similarity in the core functions of the job and are, therefore, much less useful to the Board. Our analysis of the two jobs shows a startling degree of similarity between them. It is true that in some areas the jobs differ, but taken as a whole, the strengths and weaknesses balance each other. We therefore conclude that on the basis of the similarities between the jobs, there is no justification for different rates of pay. Consequently we award that effective February 19,

1991, the rates of pay in effect at that time for Farm Products Inspector 2 be increased 7% at the minimum, 11% at the midpoint and 15.1% at the maximum.

We remain seized to deal with any issues arising from this award.

Nepean, this 24th day of August, 1993.

M.B. Keller, Vice-Chairperson

"W. Lobraico

I Concur

W. Lobraico, Employer Nominee

"B. Switzman"

I Concur

B. Switzman, Union Nominees

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T/0075/91

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Mine Rescue Officer 1 & 2)

Applicant

- and -

the Crown in Right of Ontario
(Ministry of Labour)

Respondent

BEFORE:	M. Saltman	Vice-Chairperson
	B. Switzman	Member
	W. Lobriaco	Member

FOR THE UNION:
L. Robinson
Researcher
Ontario Public Service Employees Union

FOR THE EMPLOYER:
L. Oudyk
Staff Relations Officer
Management Board of Cabinet

AWARD

This case involves the establishment of salary ranges for the newly-created Mine Rescue Officer class series. This class series, which replaces the old Mine Rescue Training Officer series, covers positions in the Ministry of Labour which are responsible for the provision of technical advice and training in mine rescue and emergency procedures and for the repair and overhaul of mine rescue equipment. As of the date of the hearings, there were eight employees classified as Mine Rescue Officer 1 and one employee classified as Mine Rescue Officer 2 (who were formerly classified as Mine Rescue Training Officer 1 and Mine Rescue Training Officer 2, respectively). Both the new and former classifications are in the Trades and Crafts group of the Maintenance Services category.

The new class series came about in response to a report of a provincial inquiry into mine safety (known as the "Stevenson Report"). That report noted, among other matters, that the mine rescue organization then in effect in Ontario was inadequate, restricted, as it was, to the handling of fire emergencies. Accordingly, the report recommended that the mine rescue organization be expanded to cover non-fire emergencies, such as rockbursts, floods and groundfalls.

That recommendation was implemented and the role of the Mine Rescue Training Officer expanded accordingly to cover non-fire emergencies. As a result, a new class standard was developed for the Mine Rescue Officer series which recognized the broader range of duties required to be performed as well as the increased level of skill and knowledge required in the performance of these duties. The revised class standard was approved by the Civil Service Commission on April 25, 1991 and agreed to by the Union thereafter. The revised standard is set out in Appendix "A" attached hereto. For purposes of comparison, the old class standards for the Mine Rescue Training Officer 1 and Mine Rescue Training Officer 2 levels are set out in Appendices "B" and "C", respectively.

Notwithstanding agreement as to content, the parties were unable to agree on a salary range for the revised class standard. Accordingly, they referred the matter to this Board for determination under the provisions of Article 5.8 of the collective agreement, which reads as follows:

> "5.8 When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration."

Article 5.8 contemplates that, when a new classification has been created or an existing classification revised, the parties will attempt to negotiate a salary range for the new or revised classification. If no agreement is reached, the Employer may establish the salary range unilaterally, subject to the right of the Union to have the matter determined at arbitration.

Obviously, there is a difference in format between the old and new class standards. For instance, although there were separate class standards for the Mine Rescue Training Officer 1 and Mine Rescue Training Officer 2 levels, there is one standard encompassing both levels of Mine Rescue Officer. Furthermore, the old standards contain a concise description of duties whereas the new standard is considerably more detailed, setting out, as it does both duties and responsibilities as well as three compensable factors (known as "allocation factors"), being those factors which determine the level to which the job is allocated.

In this case, the Employer took the position that, apart from some minor variation in the allocation factors, the actual content of the two class standards ***was*** very similar. The Union, however, took the position that there has been a substantial change in job content.

A comparison of the duties and responsibilities of the old class standard for Mine Rescue Training Officer 1 and the new standard for Mine Rescue Officer 1 reveals a considerable amount of overlap between the two. Both standards refer to providing specialized equipment and advice to management in actual emergencies; developing and providing training programmes in mine rescue and emergency procedures for mine rescue teams; developing and administering examinations and other techniques to assess the competency of mine rescue teams; maintaining personnel and training records; servicing, testing and making minor repairs to mine rescue equipment; liaising with community officials such as police, hospital and fire department to ensure co-operation in the event of emergencies; and providing technical advice, training and emergency assistance to a variety of community officials, among others. There is also reference in the old standard to "guiding management in the preparation of press releases relating to mine rescue recovery operations", which is not mentioned in the new standard, and to responsibility in circumstances where there is no mine rescue organization in existence for taking charge of the mine rescue operation, including mobilization of men and equipment in an actual emergency whereas the new standard makes no reference to the circumstance where there is no mine rescue organization in existence and refers in an actual emergency to making changes to the provision of equipment only. The new standard also refers to advising mine management on the development and evaluation of mine emergency procedures for the particular mine and to assisting in the development and evaluation of the mine rescue organization for the entire district as well as other ancillary functions including arranging for/purchasing local supplies and services in accordance with Ministry policies and procedures, which are not referred to in the old standard. The main difference, however, is that under the new standard, duties are performed not only in relation to fire emergencies but also in relation to rockbursts and other non-fire emergencies.

With respect to the expanded role of the Mine Rescue Officer in relation to non-fire emergencies, the allocation factors (and, in particular, the skills and knowledge factor) in the new standard makes reference to a "good knowledge of mine and fire hazards, such as rockbursts, oxygen deficiency and groundfalls", which is not found in the old standard. Moreover, as to the additional duties and responsibilities which are not reflected in the old standard, the new class standard requires that the incumbent exercise "judgement" in carrying out, among other functions, the consultative role in relation to the development and evaluation of mine emergency procedures and that he be held "accountable" for not doing so effectively.

As to the Mine Rescue Officer 2 level, both the old and new class standards make reference to overhauling, servicing and making major repairs to specialized mine rescue equipment (which distinguishes the Mine Rescue Officer 1 and Mine Rescue Officer 2 levels), as well as developing and providing training programmes in mine rescue and emergency procedures for mine rescue teams; developing and administering examinations and other techniques to assess the competency of mine rescue teams; and maintaining personnel and training records (all of which are also reflected in the Mine Rescue Officer 1 standard). As well, Mine Rescue Officers

2 are expected to provide technical advice and training to Mine Rescue Officers 1 and to a variety of other officials in carrying out routine repairs and maintenance of equipment; and to provide advice to management and specialized equipment in an actual emergency, whereas under the old standard, provided there is no rescue organization existence, they would appear to take charge of the rescue operation, which would include mobilizing men and equipment. As at the Mine Rescue Officer 1 level, the old class standard refers to guiding management in the preparation of press releases relating to mine rescue and recovery operations, which is not referred to in the new standard.

The new standard also includes reference to developing rules and procedures for the safe operation of mine rescue equipment; researching the development of mine rescue tools and equipment; and recommending the major acquisition of special purpose equipment after extensive evaluation and field testing, none of which is found in the old standard. Moreover, as with the Mine Rescue Officer 1 level, all of the additional duties and responsibilities at the Mine Rescue Officer 2 level are performed in relation to non-fire, as well as fire, emergencies.

Changes in the allocation factors also reflect the expanded role of the Mine Rescue Officer 2 in relation to non-fire emergencies and additional duties in relation to the development of new equipment and operating procedures for mine rescue operations; the major repair and overhaul of equipment; and the provision of training and advice to Mine Rescue Officers 1 in carrying out routine repairs and maintenance.

Taking into account changes in the Mine Rescue Officer 1 and Mine Rescue Officer 2 class standards in relation to non-fire emergencies, as well as changes to the Mine Rescue Officer 1 class standard to include responsibilities in relation to the development and evaluation of mine rescue and emergency procedures, among other matters, and changes to the Mine Rescue Officer 2 class standard to include the development and acquisition of mine rescue tools and equipment, as well as the development of rules for the operation of this equipment, the Board is of the view that there has been a substantial, qualitative change in job function for the Mine Rescue Officer 1 and Mine Rescue Officer 2 classifications amounting to the establishment of new or revised classifications within the meaning of Article 5.8 of the collective agreement.

As to the appropriate salary levels for the Mine Rescue Officer 1 and Mine Rescue Officer 2 levels, the Employer has offered a 2 percent increase over the old Mine Rescue Training Officer 1 and Mine Rescue Training Officer 2 levels, respectively. In support of its position, the Employer relied primarily on a comparison with another classification in the same group and category, namely, Exhibit Fabricator, for which, the Employer claimed, the compensable factors are at the same level as the Mine

Rescue Officers. It should be noted, however, that there was no agreement that the compensable factors are comparable as between the two classifications. Moreover, as there was a wide disparity in job function, it would seem that the basis for comparison has not been established. Furthermore, a comparison with the classification of Staff Training Officer, Community and Social Services, on which the Employer also relied, would seem to be subject to the same limitations. Finally, although the external comparisons proffered by the Employer would appear to bear some relation to the classification in question (as they would seem from their titles to relate to some form of mine inspection duties), it was impossible to assess the extent of the comparison as a job description was provided for only one of the six job classifications referred to. Moreover, as the Employer candidly conceded, even in the presence of job descriptions, it is inherently difficult to compare jobs from two different classification systems.

A better comparison, in the Board's view, is provided by the Ontario Fire College Instructors, Fire Services Advisers and Fire Safety Officers, on which the Union relied. Taking into account the class standards, which were provided for these classifications, it would appear that these classifications, while not entirely analogous, bear some relation to the classification of Mine Rescue Officers. It should be noted that all of these classifications were at one time or another considered by the Employer as possible comparators for the Mine Rescue Officer classification. Although they were ultimately rejected, nevertheless, they would appear to be far more relevant to the task at hand than the comparators upon which the Employer relied in these proceedings.

Taking into account all of the available information, the Board awards the following rates of pay for the Mine Rescue Officer 1 and Mine Rescue Officer 2 classifications:

	START RATE	END RATE
MINE RESCUE OFFICER 1	$49,786.67	$54,742.56
MINE RESCUE OFFICER 2	$51,066.96	$57,108.00

The number of steps in the current salary ranges remains unchanged.

These salary ranges shall be effective from April 1, 1991, which is the first day of the month in which the revised class standards were submitted for approval by the Civil Service Commission. The Board will remain seised in the event that difficulties arise in the application of this award.

DATED AT TORONTO, this 10th day of ~~August~~ September, 1993.

Maureen Sal
Chairman

"Bill Lobraico"
Employer Nominee

"Brian Switzman"
Union Nominee

APPENDIX "A"

CLASS STANDARDS

Category	Group	PREAMBLE
Maintenance Services	MS-02C Trades and Crafts	

Series	Class Code
Mine Rescue Officer	

MINE RESCUE OFFICER 1 - 2

The Mine Rescue Officer series covers positions of employees within an assigned geographic area of the province who are responsible for advising and consulting with mine management and others on mine emergency procedures and developing, organizing and providing training programs for mine rescue teams and emergency response personnel. In addition, they maintain and repair mine rescue, fire fighting, life support and extrication equipment for use in mine emergencies. Advice, training and emergency assistance are also provided to police, hospital and ambulance officials, to fire fighters and to staff of other government ministries.

Responsibilities include:

- providing advice to mine managers and ministry officials on the development and adequacy of individual mine emergency procedures;
- assisting in the development and evaluation of the district mine rescue organization;
- planning, developing, organizing and conducting training programs for mine rescue teams;
- evaluating team and individual performance under classroom, simulated and actual emergency conditions;
- maintaining, servicing and repairing specialized breathing apparatus, detection, fire fighting, emergency extrication and life support equipment, mine rescue property and mine rescue vehicle;
- consulting with and providing timely advice to mine management during life threatening emergencies, such as rockbursts, groundfalls, fires or oxygen deficiency in accordance with Ministry guidelines and procedures;
- liaising with other emergency organizations to ensure co-operation, also to provide assistance or train their emergency personnel;
- providing follow up investigation of mine emergencies

including written reports and recommendations for corrective action.

Allocation Factors

All Mine Rescue Officers in this series require:

- knowledge of underground and surface mining methods, practices, terminology, equipment and hazards;
- advanced knowledge of first aid principles, methods and devices;
- knowledge of life-saving, fire-fighting and rescue equipment, methods and procedures;
- mechanical aptitude;
- demonstrated ability to instruct others;
- effective oral and written communication skills.

The allocation of positions to a level in this series is based on evaluation of three compensable factors.

Skills and Knowledge

The following elements in this factor are used to differentiate between levels of work:

- the degree of knowledge of ministry legislation, policies and procedures and of specialized mine rescue, fire-fighting, extrication and life support methods, procedures and equipment;
- the level of mechanical skills;
- the degree of analytical and administrative skills.

Judgement

The following elements in this factor are used to differentiate between levels of work:

- the level and nature of technical advice and training provided;
- the degree of responsibility for testing, maintenance and repair of specialized equipment;
- the degree of independent judgement exercised in providing recommendation to mine management.

Accountability

The following elements in this factor are used to differentiate between levels of work:

- accountability for technical aspects of the mine rescue program;
- the relative impact of decisions and recommendations made;

- the relative likelihood of errors being detected and corrected with/without serious consequences.

Levels

There are two levels of work within this series, as follows:

Level 1

Employees in positions at this level are responsible for the provision of training programs for mine rescue teams and emergency response personnel within an assigned area of the province and for the testing, maintenance, proper use and minor repair of specialized equipment.

Level 2

Employees in positions at this level are responsible for the provision of technical advice on complex issues and the major overhaul and repair of all specialized equipment, in addition to the provision of training programs for mine rescue teams, emergency response personnel and equipment technicians.

MINE RESCUE OFFICER 1

This class covers positions which are responsible for developing and providing training programs in mine rescue and emergency preparedness in an assigned area of the province for mine rescue personnel and the testing, maintenance and/or minor repair of ministry mine rescue equipment and property.

Characteristic Duties

These employees consult with and advise mine management on the development of emergency organization and procedures for each mine and, in conjunction with ministry officials, assist in the development and evaluation of the District mine emergency organization. In actual emergencies, they provide timely advice to mine management, and either arrange for specialized equipment for rescue work or upon arrival at the scene, provide and maintain the equipment.

They plan, develop, organize and conduct a variety of mine rescue training programs such as classroom lectures, practical demonstrations, simulated emergency exercises and/or annual district competitions for mine personnel including management, supervisors, engineers, technicians, miners and university/college students. They develop, administer and evaluate examinations and performance demonstrations to evaluate competency in the theory and practice of mine rescue, maintain related attendance and training records and initiate the issuance of Mine Rescue Training Certificates.

In addition, they service, test and make minor repairs to specialized detection, fire-fighting, rescue and extrication equipment and complex life support equipment. They are responsible for the maintenance and security of a ministry emergency vehicle and, in some cases, ministry mine rescue station and property. They locally purchase or arrange and pay for supplies, equipment parts, local services and utilities on behalf of the ministry.

They liaise with various community officials such as police, hospital and fire department, to ensure co-ordination in the event of emergencies and they provide training advice and/or emergency assistance to these officials and staff of other ministries.

Skills and Knowledge

The performance of these duties requires:

- general knowledge of relevant sections of occupational health and safety legislation and mining regulations; ministry standards, manuals, policies and procedures;
- sound knowledge of mine designs and types, mining methods, procedures; terminology and ground support methods;
- advanced knowledge of fire-fighting, rescue and life support theories, methods, procedures and equipment;
- advanced knowledge of characteristics of gases commonly found in mines and their affects (sic) on the human body;
- good knowledge of mining and fire hazards, such as rockbursts, oxygen deficiency and groundfalls;
- good knowledge of emergency organization procedures, facilities, equipment and personnel in assigned area;
- problem solving, analytical and administrative skills and the ability to provide advice and consultation in a variety of settings and situations;
- demonstrable skill in the testing, maintenance and minor repair of specialized equipment.

Judgement

Employees work under general supervision usually remote from supervisor, and receive training or direction from technical specialist. They exercise judgement in:

- consulting with and providing advice to mine management on the development and adequacy of mine emergency organization procedures and during emergencies;
- determining methods of instruction and developing and

organizing materials, exercises and simulations for group training sessions;
- organizing, scheduling and conducting training program and evaluating individual and group competency;
- testing equipment and identifying required repairs, referring equipment for major repair or complete overhaul to a technical specialist;
- providing technical advice, training and assistance to a variety of community officials.

Accountability

Employees are accountable for:

- evaluating the effectiveness of district/mine emergency organization and procedures in conjunction with other ministry officials;
- the provision of training programs for mine rescue personnel in an assigned area in accordance with ministry legislation, standards, policies and procedures;
- the regular testing, maintenance and minor repair of specialized equipment in accordance with established procedures;
- arranging for/purchasing local supplies and services in accordance with ministry policies and procedures;
- the maintenance and security of mine rescue station and vehicle, where required.

Impact of Errors

Failure to provide effective training programs to mine rescue personnel, or to carry out required testing and maintenance on equipment, or the provision of inappropriate advice could result in injury or loss of life to underground personnel and mine rescue teams, loss or damage to mine property and equipment and significant costs to Ontario mining companies.

MINE RESCUE OFFICER 2

This class covers positions which are responsible for developing and providing technical training programs in mine rescue and emergency preparedness; overhauling, servicing and making major repairs to ministry specialized mine rescue equipment referred from all areas of the province and for the provision of technical advice and assistance to a variety of officials and to working level mine rescue officers.

Characteristic Duties

These employees schedule and carry out major overhauls and repairs, including complete disassembly and assembly, of extrication and complex life support equipment in accordance with manufacturers' methods and procedures, and develop operating rules and procedures for the safe operation of this equipment. They train and provide technical guidance and advice to working level officers and mine technicians in carrying out maintenance and routine repairs to equipment. They research the development of special rescue tools and equipment. They recommend major acquisition of special purpose equipment after extensive evaluation and field testing and provide advice and assistance to mine and mine rescue organization management in the resolution of technical problems. In actual emergencies, they advise mine management, provide specialized equipment throughout the province and maintain equipment for rescue work at the scene.

They plan, develop, organize and conduct a variety of mine rescue training programs such as classroom lectures, practical demonstrations, simulated emergency exercises or annual district competitions, for mine personnel including management, supervisors, engineers, technicians, miners and university/college students. They develop and administer examinations and performance demonstrations to evaluate competency in the theory and practice of mine rescue, maintain related attendance and training records and initiate the issuance of Mine Rescue Training Certificates.

They liaise with various community officials such as police, hospital and fire department, to ensure co-ordination in the event of emergencies and they provide training advice and/or emergency assistance to these officials and staff of other ministries.

Skills and Knowledge

The performance of these duties requires:

- sound knowledge of relevant occupational health and safety legislation and mining regulations, ministry standards, manuals, policies and procedures;
- thorough knowledge of mine design and type, mining methods, procedures, terminology and equipment;
- highly specialized knowledge of fire-fighting, rescue and life support theories, methods, procedures and equipment;
- advanced knowledge of the characteristics of gases commonly found in mines and their effects on the human body;
- good knowledge of mining and fire hazards and of emergency organization procedures, facilities, equipment and personnel;
- well-developed problem-solving, analytical and administrative skills and proven ability to provide technical advice and consult with a variety of officials and colleagues;
- advanced level of skill in the testing, maintenance, overhaul and repair of specialized equipment.

Judgement

Employees work under general supervision and provide technical training and direction to working level officers and others. Judgement is exercised in:

- diagnosing and correcting cause(s) of equipment malfunction;
- identifying, purchasing or making special tools or devices required to carry out repairs;
- recommending and maintaining optimum level of inventory of parts, supplies and tools;
- developing and conducting mine rescue and technical training programs;
- developing and implementing operating rules and procedures for safe operation of equipment;
- providing advice and recommendations on the resolution of technical problems.

Accountability

Employees are accountable for:

- maintaining high standards of quality control for major repairs and overhauls to specialized ministry equipment referred from all areas of the province;
- ensuring long-term satisfactory operation of components through effective maintenance;
- the development and conduct of effective training in the maintenance and repair of specialized equipment for working level officers and other ministry and mine personnel;
- the quality and utilization of technical advice and recommendations;
- the transportation and operation of specialized equipment throughout the province in response to mine emergencies;
- the provision of training programs for mine rescue personnel in accordance with ministry standards.

Impact of Errors

Failure to adequately repair and maintain equipment, to provide effective technical or mine rescue training or the provision of poor advice could result in injury or loss of life to underground personnel and mine rescue teams; loss or damage to mine property and equipment; extensive damage to costly mine rescue equipment and significant costs to Ontario mining companies. As the specialist in equipment repair, failure to meet high standards of quality control could lead to equipment malfunction during use.

APPENDIX "B"

MINE RESCUE TRAINING OFFICER 1

CLASS DEFINITION:

This class covers positions of employees who are responsible for teaching and training mine rescue crews in an assigned district of the Province. Under the direction of the Inspector of Mine Rescue Training, these employees train rescue crews which are provided by the various mining companies in their area, and are responsible for the efficiency of the crews. They provide classroom and practical instruction in mine rescue and recovery techniques, the use and maintenance of equipment and first aid and resuscitation. They also train shift bosses, engineers and technical staff of the mines in their district. These employees keep training, equipment and personnel records and make regular reports to the Head Office.

These employees devise, plan and set up underground training problems and exercises, simulating actual conditions under which the crews will work. The training programs and exercises are designed to suit the requirements of the particular crews being trained as well as to provide the crews with practice in solving the many problems encountered in actual rescue and recovery work. They plan and conduct exercises for the annual competitions between mine rescue crews in their district and assist in the Provincial finals of these competitions.

They maintain mine rescue station property and equipment. They test equipment and make minor repairs to detection, resuscitation, rescue and firefighting equipment. These employees consult with and advise mine officials in case of fires, occurrences of mine gases and other emergencies as well as guiding management in preparation of press release relating to mine rescue and recovery operations. Where no rescue organization exists, these employees may take charge of the operation and mobilize men and equipment for mine rescue work.

They may be required to assist officials of other government Departments by proving advice and guidance where dangerous gas conditions exist as well as testing and servicing equipment, or lending equipment. They also provide the same services for municipal fire departments in their area.

QUALIFICATIONS:

1. Grade 12 education plus the Advanced Certificate in Mine Rescue Training plus satisfactory completion of a recognized First Aid Course.

2. A minimum of three years' mine production experience and at least two years' experience as a member of a Mine Rescue Team.

3. Ability to teach and obtain co-operation of others; ability to speak in public; good physical condition.

Revised July 1965

APPENDIX "C"

MINE RESCUE TRAINING OFFICER 2

CLASS DEFINITION:

This class covers the positions of employees who are responsible for teaching and training mine rescue crews in an assigned district of the Province, and who are responsible for the major repair and overhaul of equipment. Under the direction of the Inspector of Mine Rescue Training, these employees train rescue crews which are provided by the various mining companies in their area, and are responsible for the efficiency of the crews. They provide classroom and practical instruction in mine rescue and recovery techniques, the use and maintenance of equipment, and in first aid and resuscitation. They also train shift bosses, engineers and technical staff of the mines in their district. These employees keep training, equipment and personnel records and make regular reports to the Head Office.

These employees devise, plan and set up underground training problems and exercises simulating actual conditions under which the crews will work. The training programs and exercises are designed to suit the requirements of the particular crews being trained, as well as to provide the crews with practice in solving the many problems encountered in actual rescue and recovery work. They plan and conduct exercises for the annual competitions between mine rescue crews in their district, and assist in the Provincial finals of these competitions.

They maintain mine rescue station property and equipment. They test equipment and make minor repairs to detection, resuscitation, rescue and firefighting equipment. These employees consult with and advise mine officials in case of fires, occurrences of mine gases and other emergencies, as well as guiding management in preparation of press releases relating to mine rescue and recovery operations. Where no rescue organization exists, these employees may take charge of the operation and mobilize men and equipment for mine rescue work.

They may be required to assist officials of other government Departments by providing advice and guidance where dangerous gas conditions exist as well as testing and servicing equipment, or lending equipment. They also provide the same services for municipal fire departments in their area.

In addition, these employees undertake the complete overhaul of equipment and perform major repairs to equipment which is referred to them from other districts, and are responsible for the quality of workmanship and the satisfactory performance of equipment repaired or overhauled.

QUALIFICATIONS:

1. Grade 12 education plus the Advanced Certificate in Mine Rescue Training; satisfactory completion of a recognized First Aid Course, plus the satisfactory completion of courses on the repair and overhaul of specialized equipment.
2. A minimum of three years' mine production experience plus at least two years' experience as a member of a Mine Rescue Team.
3. Ability to teach and obtain co-operation of others; ability to speak in public; good physical condition.

July 1965

Ontario Public Service
Labour
Relations
Tribunal

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T/0080/91

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Occupational Health and Safety Advisor)

Union

- and -

the Crown in Right of Ontario
(Ministry of Transportation)

Employer

BEFORE:	M. Watters	Vice-Chairperson
	L. Robbins	Member
	F. Collict	Member

FOR THE UNION:
L. Robinson
Researcher
Ontario Public Service Employees Union

FOR THE EMPLOYER:
B. Doherty
Staff Relations Officer
Management Board of Cabinet

HEARING:
September 23, 1992
November 3, 1992

The Board is here called upon to determine the wage rate for the new classification of Occupational Health And Safety Advisor, (hereinafter referred to as 'Advisor'), pursuant to article 5.8.1 of the collective agreement. This article provides as follows:

> When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the Employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration.

The employees covered by this dispute all work for the Ministry of Transportation. The Class Definition generally describes their function in the following terms:

> "This class covers positions of employees who prepare, promote, organize, conduct and maintain a comprehensive program of occupational hygiene, health and safety monitoring and training in assigned Region/District. These employees are responsible for monitoring the work procedures performed by workers to ensure the prevention of injuries, damage to ministry property and equipment, and compliance with related legislation and ministry policy. They monitor the workplace conditions and the occupational health of employees to minimize the development of illness or disease."

These employees are located in all five (5) Regions of the Ministry. They report to a Regional Occupational Health And Safety Manager in all but the Northwestern Region. There, the Advisors report to a District Engineer. There were nineteen (19) Advisors employed within the Ministry as at the end of 1991. They were formerly classified as Safety Instruction Officers 2.

Both the new and old classifications fall within the Publicity Group of the Administrative Services Category. Pending the release of this award, the Advisors continue to be paid at their former rate.

In 1982, a grievance was filed by a Safety Instruction Officer 2 in the Ministry of Environment. The grievor sought an upgrade of his classification to Safety Instruction Officer 3. The grievance in that case was ultimately denied by the Grievance Settlement Board in Maitland, 388/82 (Brunner). An identical grievance, filed in 1982 by an employee in the Ministry of Transportation, was similarly denied by the Board. Notwithstanding these decisions, pressure apparently mounted for a review of the Safety Instruction Officer 2 classification, particularly within the Ministry of Environment. That Ministry ultimately established a Fast Track Committee to review the duties of the classification and the value that should be accorded to same. Its report of March, 1987 concluded that all Safety Instruction Officers 2 in that Ministry should be upgraded to the level of Safety Instruction Officer 3. This recommendation was subsequently implemented. Other ministries, such as Agriculture And Food and Government Services, also took steps to upgrade their Safety Instruction Officers 2.

The Ministry of Transportation elected not to follow the example of the ministries referred to above. A series of individual grievances were filed in respect of the issue. These were amalgamated and became known as the Massey et al. grievances. After several days of hearings before the Grievance Settlement Board in 1989 and 1990, the parties agreed to settle the dispute on the following terms:

> "1. The employer agrees that the grievors are improperly classified as Safety Instruction Officer 2.
>
> 2. The employer agrees to find or create a proper classification for the grievors.
> ....
> ....
>
> 4. The employer agrees to pay the retroactive wages due to the grievors as a result of the re-classification back to November 1, 1986.
>
> 5. The employer agrees to pay interest on the retroactive wages owed to the grievors as a result of the re-classification from November 1, 1986 as per the Hallowel House Limited formula (1980) OLRB Rep. Jan. 35.
>
> ....
> .... "

The above-cited settlement was dated January 4, 1991. The new class standard, effective April 24, 1991, was prepared as a consequence of this agreement. The parties failure to agree on a new wage rate for the Advisors has led to the instant proceeding before this Board. We were informed that in early 1991, the Managers of the Safety Instruction Officers 2 were reclassified from AM17 to AM18. This resulted in a salary increase of 7.7%.

The representative of the Union compared the old and new class standards. He suggested that, under the former class standards, the Safety Instruction Officers 2 were primarily engaged in accident prevention. It was argued that compliance with the Ministry's safety program was then achieved through efforts designed to facilitate voluntary cooperation. The Union's representative submitted that the new standard, in contrast, emphasizes investigation and monitoring so as to ensure that correct working methods and safety procedures are enforced. It was the position of the Union that the work of the affected employees has become more specialized and technical in nature as a consequence of the significant development of occupational health and safety legislation, such as the Occupational Health And Safety Act and related Regulations. It was submitted that the greater diversity of legislation has changed the nature and scope of the Advisor's duties and the way in which they perform them. Simply put, we were urged to conclude that the Advisors must now understand, interpret, recommend and advise in the context of a more comprehensive system of legislative regulation. From the perspective of the Union, this has led to the need for additional knowledge and, in certain cases, new certifications. Reference was made, inter alia, to the need for the Advisor to be conversant with, and trained in, the following areas: transportation of dangerous goods; disposal of hazardous waste; occupational hygiene; ergonomics; the conduct of air samples, sound surveys and audiometric testing; and the monitoring and testing for designated substances, such as lead. It was argued that the new responsibilities have increased the need for both training and research. Reference was also made to the Advisor's responsibilities relating to the Workers' Compensation Act. These employees have been given the task of working with WCB officials and with medical practitioners to develop a workplace analysis to assist in accomodating an injured worker's return to employment. It was further submitted that the Advisor has a "heightened responsibility for investigation and reporting in cases of critical injuries or accidents." The thrust of the Union's argument was that the new responsibilities have enhanced the level of decision making and accountability expected of the Advisor. It was also suggested that their work is conducted more independently than before. The Advisor, under the new class standard, labours under the "periodical supervision of a Regional Manager". Under the former standard, the Safety Instruction Officer 2 was "supervised by a senior officer at Head Office or the senior official of the region."

The Union focused on the duties of the Staff Safety Officer and the Occupational Health And Safety Officer, as described in the Position Specification And Class Allocation forms, in positions in Kingston and Thunder Bay, respectively. These duties were advanced as being representative of the work performed by the Advisors. They were reviewed against the language of the former class standard. It was submitted by the Union that such duties fell outside of the scope of work described therein.

The Union also relied on the following internal comparators: (i) a Safety Officer position with the Ministry of Government Services; (ii) an Occupational Health And Safety Officer position with the Ministry of Agriculture and Food; and (iii) a Regional Safety Officer position with the Ministry of Environment. All of these positions are classified at the level of Safety Instruction Officer 3. It was the Union's submission that the duties performed in these positions are substantially similar to those engaged in by the Advisors. Indeed, in certain respects, it was argued that the Advisors have greater responsibility, knowledge and accountability than the comparators. Ultimately, it was the Union's position that the Advisors should be paid at the same, if not a higher, rate than the comparison employees. It was noted that the 1991 maximum weekly rate for the Safety Instruction Officer 3 classification was 18.9% higher than the comparable rate for the Safety Instruction Officer 2 classification.

The Union compared the salary paid to the Advisors with that paid to the Regional Managers of Occupational Health And Safety. As stated previously, the Advisors report to these Regional Managers in all but the Northwestern Region. The gap in the weekly maximum salary was $260.72 or 31.2% for 1991. It was asserted by the Union that a gap of this magnitude was excessive given the wide overlap in duties and in skills and knowledge required. We were asked to reduce this gap by a substantial margin.

The Union further referred to the Consultant position in the Occupational Health and Safety Unit at Head Office. The incumbent in that position, which is classified at the AM17 level, was paid a maximum 1991 weekly salary which was $311.51, or 37.3%, higher than that paid to the Advisors. Again, the Union claimed that such a gap was inordinate. Lastly, reference was made to the position of Field Service Representative for the Workers' Health and Safety Centre which is funded by the Ministry of Labour. The average 1991 weekly rate for that position was 42.61% higher than that paid to the Advisors.

For all of the above reasons, it was submitted by the Union that the wage rates for the Advisors should be increased by 25% right across the five (5) steps of the salary grid. This would result in a 1991 weekly maximum rate of $1,043.30. It was noted that such an increase would serve to elevate the Advisor's salary above that paid to the Safety Instruction Officer 3 classification. As indicated previously, the 1991 weekly maximum rate paid to the latter classification exceeded the Advisor's rate by 18.9%. The increase would place the Advisor's rate at 4.8% below that applicable to the Regional Manager and 9.0% below that paid to the Consultant. This Board was urged to find that, in all of the circumstances, the desired adjustment was moderate in nature.

In response, it was the position of the Employer that no change should be made to the salary grid. This submission was premised on a number of factors. Firstly, it was argued that the job of the Advisor has not materially changed over time. Indeed, the representative of the Employer suggested that such job has become easier to perform given that the various pieces of legislation place obligations on the "parties" rather than on this group of employees. From the Employer's perspective, these employees serve more of an advisory, and less of an enforcement, function. It was submitted that many of the responsibilities referenced by the Union, including research, purchasing and liason with the W.C.B., are not core functions of the position. The Employer's representative further asserted that the level of supervision received remains unchanged. Secondly, it was stated that the Ministry declined to follow the lead of the Ministry of Environment because it had a different structure and hierarchy. More particularly, it was suggested that in this Ministry the Safety Instruction Officers report to a specialist and are not heavily involved in policy development. This was contrasted with the situation in the Ministry of Environment. Thirdly, the Board was asked to consider the Employer's ability to fund a large increase. Mention was made of the recent settlement between the Government and the Ontario Public Service Employees' Union which provided for relatively low wage increases over the period in question.

The Employer supplied a separate set of comparators. These were as follows: (i) the Investigator 1, Agricultural Products in the Ministry of Agriculture and Food; (ii) the Review Officer in the Ministry of Transportation; and (iii) the position of Occupational Health And Safety Officer at the Rideau Regional Centre administered by the Ministry of Community and Social Services. With respect to each of the first two (2) of the comparators, the Employer's representative engaged in a comparison of the class standards. Simply stated, he submitted that the duties performed, supervision received and skills and knowledge required were comparable to the Advisor classification. It was noted that the maximum annual salary of the two (2) comparators was close to that paid to the Advisors. The Employer argued that the third comparator was substantially similar to the job actually performed by the present grievors. Its representative stressed that the position at the Rideau Regional Centre is classified at the Safety Instruction Officer 2 level. The Board was asked, on the basis of these comparators, to retain the existing salary structure. As an alternative argument, it was submitted that the Advisors should not receive more than the 7.7% granted to the Regional Managers in 1991. It was suggested that such an increase would serve to restore the historical gap.

Our task in this case is to establish the appropriate wage rate for the Advisor classification as of April 24, 1991. The rate for the Safety Instruction Officer 2 classification as of that date was as follows:

735.27 758.40 782.48 808.20 834.65

The Board has carefully considered the respective submissions of the parties. We have been persuaded that the job described in the new class standard is substantially different from the one contemplated in the Safety Instruction Officer 2 standard. More specifically, we accept the submission of the Union that the required duties have become more comprehensive and demanding as a consequence of the broader legislative mandate. This development, in our judgment, has increased both the demand for highly technical decision making and the level of accountability. It has further served to elevate the skills and knowledge required to effectively perform in the position. We also agree that the grievors receive a lessor degree of supervision under the new class standard. The Board is, therefore, satisfied that the salary rates should be increased. Clearly, such an eventuality was in the minds of the parties when they concluded the settlement of January 4, 1991. This likelihood is reflected by their reference to the payment of retroactive wages due to the grievors back to November, 1986.

The Employer submitted that the Union's comparators should not be given any weight. Its representative did not, however, undertake an in-depth critique of same. Rather, he simply argued that the comparators offered by the Employer should be preferred.

The Investigator 1, Agricultural Products class standard contemplates investigational and inspectional duties in the enforcement of The Dead Animal Disposal Act and The Meat Inspection Act (Ontario). The employees covered by such standard investigate malpractices in the sale of non-inspected or dead animal meat. They are also involved in the enforcement of related Acts and Regulations and in the provision of assistance vis a vis applications for various types of licences. As indicated earlier in this award, the Employer asserted that their job was in many respects similar to that performed by the Advisors. The Union, in reply, noted that the class standard of September, 1966 is outdated. Its representative informed the Board that none of the six (6) people within the classification do the work described by the standard. Rather, they are engaged in animal care and fruit and vegetable inspection. Evidence was led to establish that the employees, who actually perform the work envisaged by the class standard, are classified as Executive Officers 2 (Atypical) and earn a maximum salary which is 27% greater than the maximum of the Safety Inspection Officer 2. It is, therefore, apparent that this comparator does not assist the position taken by the Employer.

The Review Officer class standard covers positions of employees who review records and interview drivers under the driver improvement program. Additionally, they may conduct road tests; counsel drivers; decide on appropriate courses of action in respect of licences; and prepare comprehensive reports including the compilation of statistics. The Board has not been persuaded that this is an appropriate comparable. We find that the class standard provides for a much narrower function than that performed by the Advisors. The role is directed towards individual drivers in contrast to employees and others within a distinct Region. Further, we think that the Advisors require a much broader knowledge base in order to effectively perform their responsibilities.

The position specification for the Occupational Health and Safety Officer at the Rideau Regional Centre discloses that the sole incumbent performs comparable work within the context of that institution. We have not been convinced, however, that it should be determinative in this instance. Firstly, the specification does not refer to the training of persons from non-ministry agencies and community groups as found in the Advisor class standard. Secondly, reference is not made therein to a comparable WCB function. Thirdly, it appears that the level of skills and knowledge required is not as extensive as that demanded of the Advisor. It is likely that this reflects the fact that the duties are performed within a single facility in contrast to a Region at large. Lastly, we think it would be inappropriate to give substantial weight to this comparator. The parties clearly agreed in their settlement that the grievors were improperly classified as Safety Instruction Officers 2. The

Board, as stated earlier, has concluded that the parties likely contemplated that a wage increase would flow from the act of reclassification. In the final analysis, while this comparator is the most relevant of those advanced on behalf of the Employer, we do not think that it dictates the maintenance of the status quo in terms of the Advisor wage rates.

In contrast, the Board finds that the internal comparators supplied by the Union perform work which is markedly similar to that of the Advisors. As indicated, employees in these positions in the Ministries of Environment, Agriculture and Food, and Government Services were upgraded from Safety Instruction Officers 2 to Safety Instruction Officers 3 following the report of the Fast Track Committee. In our judgment these comparators, and the practice of those ministries, provide the best guidance as to the nature of the adjustment which should be made in this case. We note, in this regard, that not all of the Advisors report to a specialist and that, under the new standard, the Advisors are involved in policy development pertaining to health and safety.

For all of the above reasons, the Board has been satisfied that the wage rates for the Advisors, as of the effective date of the new class standards, should be those as paid to the Safety Instruction Officers 3. These were as follows:

841.83	877.56	914.06	952.67	992.64

These weekly wage rates constitute an increase of 14.4% at the minimum and 18.9% at the maximum of the salary grid. Without doubt, this results in a substantial increase to these employees, especially given the retroactivity previously agreed to. This Board has been unable to find sufficient reason for treating this group of employees differently from those who were previously upgraded, on a voluntary basis, by the other ministries. In this case, we are simply following their example and thereby correcting an inequity arising from the administration of the classification system. To be clear, we are not suggesting that the job performed by the Advisors falls within the Safety Instruction Officer 3 class standard. Rather, we have merely decided that they ought to be paid the same wage as the former Safety Instruction Officers 2 whose salary was voluntarily upgraded to the Safety Instruction Officer 3 rate. The Board has not been persuaded that the employees, who are the subject of this proceeding, should receive any larger increase.

The Board retains jurisdiction to deal with any difficulties which might arise in the implementation of this award.

Dated at Windsor, Ontario this 29th day of January ,1993.

M.V. Watters
M.V. Watters **Vice-Chairperson**

L. Robbins, Union Nominee

F. Collict **Addendum attached**
F.T. Collict, Employer Nominee

ADDENDUM
OCCUPATIONAL HEALTH & SAFETY ADVISOR - MOT

This Member is in agreement with this award. Notwithstanding this concurrence, there are certain matters associated with the establishment of the salary range in the award which provide cause for concern, for reasons set out below:

1. Several years ago, the Ministry of Agriculture and Food (MAF), the Ministry of Government Services (MGS), and the Ministry of the Environment (MOE), reclassified their safety officers from the Safety Instruction Officer - 2 (SIO-2) class standard to the Safety Instruction Officer - 3 (SIO-3) class standard.

2. A similar reclassification of the Ministry of Transportation (MOT) safety officers was not done; and it was their protest that resulted in a G.S.B. - Berry-type award, the establishment of the subject new class standard (Occupational Health and Safety Advisor), and subsequently, this interest arbitration.

3. However, a review of the MGS/MAF/MOE position descriptions for safety officers would indicate that their duties and responsibilities fall short of the requirement for the SIO-3 class standard. In the SIO-3 class standard, the following is stated:

   > "This class also includes positions of Directions or (of ?) programmes such as the Director of Safety Education, Department of Transport who supervises a number of field officers in assigned districts through the province."
   >
   > (underscoring added)

   Basically, the SIO-2 and SIO-3 class standards are similar except for the above noted inclusion; and it is clear from the new class standard for Occupational Health & Safety Advisors (OH & S Advisors) who are the complainants in this dispute, that they do not,

> "...supervise(s) a number of field officers in assigned districts throughout the province."

It is clear also from the SIO-3 class standard, that SIO-3's,

> "...coordinate all phases of the programme including...the instruction and supervision of subordinate officers, and the assessment of results."
>
> (underscoring added)

In effect, the impression one gains from the SIO-3 class standard is the concept of supervision of safety programmes and the supervision of field officers in more than one district of the province.

3. The Employer has entered into an agreement with the Union to the effect that the subject MOT employees do not fall within the SIO-2 class standard (G.S.B. #2225/87 etc.)

What, then, should be the rate to be applied to the new O.H. & S. Advisor class standard?

4. The only relevant comparators presented to the Board in this case were the MGS/MAF/MOE position descriptions advanced by the Union.

However, as stated at page 11 in G.S.B. #1269/88 (ADEY),

> "...a position description "is not part of the Class Standard and accordingly does not bind the Board. At best, the Position Specifications Form may serve as an aid to interpretation" (FENSKE, at p. 13). We would add to that view which we accept that a position specification may be either open to interpretation to some extent, or subject to error when viewed in the light of the class standard. The class standard is authorized and mandated by the Public Service Act; the position specification is not."
>
> (underscoring added)

Accordingly, and in view of the above jurisprudence, the distinctions to be made in this case must be based upon the new class standard for the Occupational Health & Safety Advisor, as compared to the existing SIO-2 and SIO-3 class standards.

5. This Member agrees that the new class standard is not at the SIO-2 level. In effect,

   a) There has been a shift of emphasis from enforcement, to counselling and advising. The accountability for the O.H. & S. Act now lies with the parties (employees and management) as opposed to the safety officer. On the one hand this reduces the pressure for the safety officer; but the requirements of the O.H. & S. Act are more detailed and demanding. Basically, the title "Advisor" in the new class standard conforms to this concept.

   b) The new advisory concept applies to activities associated with the joint H. & S. committees provided for under the Act. However, this type of training and counselling was contemplated under the SIO-2 class standard.

   c) Similarly, although "research", "human physiology", and "ergonomics" are stated specifically in the new class standard, the functions of the safety officer as set out in the SIO-2 class standard remain the same.

   d) Additionally, there were W.C.B. cases, reporting activities, investigative requirements and rehabilitative responsibilities in the past for safety officers when they were classified at the SIO-2 level, as well as a variety of the work hazards (chemical, environmental, dangerous goods, etc., etc.,) referred to in the new class standard.

These are not new. They are more explicitly specified in the new class standard for O.H. & S. Advisor; but they are not new and were performed by safety officers within MOT in the past when they were classified as
SIO-2's.

6. In summary, therefore,

a) By agreement, the parties have agreed that the subject MOT employees are not properly classified as SIO-2's.

b) Predicated upon a comparison of the new class standard for O.H. & S. Advisor, and the class standards for SIO-2 and SIO-3, the subject MOT employees do not meet the SIO-3 class standard.

c) However, MGS/MAF/MOE have classified their safety officers into the SIO-3 class standard. Accordingly, these Ministries are paying their safety officers at a rate of pay which is at the SIO-3 class standard level.

d) Some support for the position set out in (b) above may be found at page 14 of the majority award, as follows:

> "To be clear, we are not suggesting that the job performed by the Advisors falls within the Safety Instruction Officer 3 class standard. Rather, we have merely decided that they ought to be paid the same wage as the former Safety Instruction Officers 2 whose salary was voluntarily upgraded to the Safety Instruction Officer 3 rate."

e) The duty of the Board in this case set out in Article 5.8.1 of the collective agreement, is to establish a rate or salary range for the revised class standard. Section 12 of CECBA, in part, is as follows:

> "12(2) In the conduct of proceedings before it and in rendering a decision in respect of a matter in dispute, the board shall consider any factor that to it appears to be relevant to the matter in dispute including,
>
> c) the desirability to maintain appropriate relationships in the conditions of employment as between classification of employees;..."

The Board's decision in this case flows from the above.

In conclusion, an analysis of the data presented to the Board would appear to lead one to conclude that a salary level for the new Occupational Health and Safety Advisor class standard positioned at the SIO-3 class standard salary level, is not warranted; but that is not the issue before this Board. In the view of this Member, the award flows from the evidence and, more specifically, from the actions of individual ministries as they administered the O.P.S. classification system independently, with apparent lack of coordination with other ministries.

F.T. Collict.
F.T. Collict

Jan. 27/93
Date

Ontario Public Service
Labour
Relations
Tribunal

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T/0091/91

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

AMALGAMATED TRANSIT UNION, LOCAL 1587

Union

- and -

THE CROWN IN RIGHT OF ONTARIO
TORONTO AREA TRANSIT OPERATING AUTHORITY
(GO TRANSIT)

Employer

BEFORE:		
	H. Brown	Vice-Chairperson
	W. Majesky	Member
	A. Cormier	Member

FOR THE UNION:
P. Cavalluzzo
Counsel
Cavalluzzo, Hayes & Shilton
Barristers & Solicitors

FOR THE EMPLOYER:
G. Lodge
Manager, Human Resources
TATOA/GO Transit

HEARING: September 15, 1992

This Board was established to set the terms of the Act to determine the matters in dispute between the parties with regard to a renewal of a collective agreement which expired on December 20th, 1991. The Board received the submissions of the parties at the hearing and subsequently has met to give consideration to all of the submissions and the preparation of this award.

The issues in dispute between the parties for determination by the Board are as follows:

1. WAGES - ARTICLE 39.1 AND SCHEDULE A
2. VACATIONS - ARTICLE 32
3. SHIFT PREMIUM - ARTICLE 36.1
4. SUNDAY PREMIUM - ARTICLE 36.2
5. SPREAD-SPLIT PREMIUM - ARTICLE 36.3
6. RETROACTIVITY - ARTICLE 39

ISSUE NO. 1 - WAGES

It is the Union's position that the employees in the bargaining unit should achieve wage parity with the TTC and proposes a wage increase of 7% in the first year and 4.75% in the second year of the agreement.

The Employer's wage proposal is 1% increase effective December 21, 1991 and 2% effective December 19, 1992.

The parties agreed to a two year collective agreement term effective December 21, 1991 to December 20, 1993.

This is the critical area of dispute between the parties. There are 1184 employees of Go Transit comprising 625 full time and 133 part-time in the bargaining unit, the remainder are employed in excluded classifications. Notice to bargain was given by the Union on August 23rd, 1991 with regard to the renewal of the agreement and the parties subsequently met in forty-four meetings which resulted in an agreement on 183 items. These matters in agreement have been signed by the parties and the remaining items in dispute as listed above, were referred to arbitration.

It is the Union's submission that the current wage rates at the TTC resulted from free collective bargaining and had been increased by 4.95% and 4.75% for the term of its agreement July 1, 1991 to June 30, 1993. Go Transit employees should receive the amounts claimed by the Union in excess of such increases paid to the employees at TTC in order to catch up to parity with TTC rates which it maintained should be applied to this bargaining unit. The Union referred as well, to the comparable wage statistics for the Transit systems at Hamilton and Mississauga. The Union relied in its submission on the applicability of parity with the TTC wages on the findings in a prior award between these parties dated October 24th, 1985 (H.D. Brown), more particularly dealt with below. Since that award, the Union has negotiated wage increases with the Employer and achieved effective parity with the TTC rates in January 1989. For the next two years of their contract they received annual increases of 7% which together with the subsequent increases created differentials between their rates and those of this bargaining unit of 50 cents in the first year and $1.41 in the second year of the agreement without consideration of any increases applied to the TTC employees in 1992.

The Employer submitted a detailed presentation with regard to this issue, all of which the Board has considered but for this purpose has referred only to the main parts of that submission. Its proposal is based on the position that it does not have the ability to pay wage increases beyond the Provincial guidelines within which its proposed increases to wages and fall comparisons with the TTC bargaining unit cannot be carried out in a precise job match. It was submitted that since the arbitration in 1985 there has been considerable change to the Employer's mandate, growth and legislated programs and the same result in that award should not now be applied. It was submitted that the inflationary settlements at the TTC which have widened the wage gap at GO Transit has had a negative effect on its ridership due to the requirement for fair increases and has led to an announcement of the loss of 400 jobs at the TTC. It was submitted that the Employer's wage offer would place it in a favourable competitive position. Senior Management salaries have been frozen for at least 1992 and increases to non-bargaining unit employees were less than its offer to members of the bargaining unit. Reference was made to the publice service settlement with OPSEU for 1992 and 1993 at 1% and 2% wage increases. In 1991 the Employer received a mandate from Treasury Board to settle collective agreements at those rates which in its submission, having regard to the financial restraints placed upon it must be applied as it is an agency of the provincial government.

Provincial transfer payments for 1993 are equal to that of 1992 and the Employer has not received additional monies to finance operations in its budget which includes wages and benefits. A copy of 1992-93 budget was produced indicating the projection of ridership which as of September had decreased 2.5% from the previous nine months and was 1% less than provided in the budget. It was submitted that the Union's proposal would add over 3 million to its operating deficit which at present has a short fall of 9.3 million after provincial funding has been applied as indicated. It was noted that its proposed wage increase would apply to the amalgamated job evaluations which increased 3.42% across the classifications. The Employer stated that the increase in the operating deficit was caused by the Burlington Rail expansion, declining ridership, loss of revenue from other sources and escalation of costs of wages, benefits, goods and services which will not be made up by the Province. In addition, the Employer's capital funding has been reduced by the Ministry of Transportation for the next operating year. It was submitted that the Board should take into account the direct or indirect costs of the matters in dispute between the parties.

It was further submitted that the Board must be concerned with the ability of the industry and the whole economy to compete with the tax dollars and the impact of collective bargaining. Reference was made to the proposal of the Treasurer to sell the assets of Go Transit with a lease back from investors. It was submitted that the Board must be concerned with collective bargaining and costs in the context of public hostility and in that regard its proposal would assist in rehabilitating the transportation industry for the public. Any excess in the cost of funding the deficit could lead to reduced service and jobs. It was submitted that in these conditions the Employer's offer was reasonable and equitable as to the increase of wages to the members of this bargaining unit for the term of this agreement.

Section 12(2) of the Act sets out the specific factors which the Board is required to consider along with any other factor that to it appears relevant. While the Board is so directed, it is within its discretion based on the evidence and representations of the parties to determine the value and weight of these factors which are found to be relevant to the particular area of dispute, most particularly however, the effect of Section 2(d) of the Act must be applied to establish terms and conditions which are "fair and reasonable" in relation to the qualifications required, the work performed, responsibility assumed and the nature of the services rendered." While all of these factors are written in broad terms, each dispute under the Act has its own factual basis for the claims of the parties which must be assessed by the Board which is fixed with this responsibility under this Article. The general proposition in the determination of interest disputes is to place the parties as reasonably as possible in the same or similar position as could be expected in free collective bargaining. The parties conducted lengthy negotiations with respect to this collective agreement and narrowed the issues to their credit, to those referred to this Board set out above. In our view of the history of these parties' negotiations the blockage to their voluntary settlement to the contract terms was not only any adverse economic conditions referred to by the Employer in its submissions, but the basis of comparability of wages for the members of this bargaining unit with others in the transportation area.

This issue was the main subject of dispute which led to the arbitration in 1985 at which the parties provided extensive submissions with regard to the parity proposal of the Union with TTC wage rates and the appropriateness of that comparison. In the Chairman's view at least, that issue was then determined and does not thereafter constitute a viable issue in contract negotiations or subsequent arbitrations and that conclusion is indeed supported by the achievement of parity in effect with the TTC operator rate by the employees in this bargaining unit by 1989. That issue of comparability with the TTC having been determined in that award it is not necessary for this Board to repeat in detail the reasons for the conclusion which must be applied that the appropriate comparable group of employees with employees in the bargaining unit of this Employer is the TTC. We will refer only to certain portions of that award which are as much currently applicable as in 1985 on this issue:

> "Go Transit is an inter-regional transportation system funded by the provincial government and as such is a Crown Corporation coming under the provisions of the Act. . . The Employer strongly resisted the Union's proposal for parity with the TTC in that in a period of restraint, there is no room for such improvement and that the proposal in such circumstances is not reasonable. . . The Go system was established to service Metropolitan Toronto and continues to do so as a commuter service for people to go in and come out of Metropolitan Toronto in the main. A minor use of the system would relate to use between other points on the line such as Mississauga to Hamilton. . . For the most part, the employees represented by the Union would be employed in Metropolitan Toronto which then becomes a logical economic comparative centre for wage comparisons. Employees of Go Transit are part of the Ontario Public Service and are controlled by the terms of the Act. . . There are common classifications and work requirements of employees in both systems and while the differences in operating transit facilities to move people within Metropolitan Toronto may be somewhat different than an inter-urban requirement the relative scales of the employees are equivalent. The head office of the Employer is in Toronto where the Management staff and other non-bargaining unit employees work. In all, this is a Toronto based operation designed to serve that Metropolis so that it can logically be said that the interests of the

> employees of Go Transit is with that of the community and with which wage and benefit comparison of employees in similar occupations can reasonably be made.
>
> By and large however, the thrust of the Union's position is in our opinion substantially supported by reference to equivalent classifications with the other main transit authority in the Metropolitan Toronto area which is the TTC and has provided this Board with a compelling argument that this is the appropriate comparison for wages to be paid by Go Transit to its employees. We do not accept the submission of the Employer to the contrary that this type of transit facility should be compared to some smaller municipal facilities and in that regard we have noted that the budget for this Employer is second only in size to the TTC. . .
>
> While absolute parity with employees in the TTC is not necessarily the end result for each classification there is a strong case to be made for equitable parity in consideration of the appropriate comparative statistics which should be achieved in the course of time. . ."

The purport and the effect of the foregoing has continued between these parties to the date of this dispute and there is no basis on the evidence before us to vary the result imposed in 1985 based on the comparability of the wages and working conditions of this bargaining unit with the Toronto Transit Commission employees. That conclusion however, does not lead automatically to acceptance of the Union's proposal for exact parity in the operators wage rates which would require a substantial catch-up during the course of this collective agreement. While the principle of parity has been established, the Board is required to take into account all of the factors referred to in the Act and in doing so must consider the economic factors relative to the term of this collective agreement and the financial considerations expressed in the Employer's brief to the Board.

The Provincial Government's policy of expenditure restraint in this province has been thoroughly set out by the Premier and Treasurer and in the Government requests to its departments and agencies to apply its guidelines represented by its transfer payments to those facilities which provide service to the public of Ontario. By that, the Employer argues that it is bound not to exceed the percentage of the transfer payments in any collective bargaining negotiations. While that is the Employer's perception of its limitations, the Government of this Province has not constrained the collective bargaining process in the province as had been the practice in the early part of the last decade, to require arbitrators to apply government policy guidelines and consider its ability to pay. The negotiations between the parties which led to the arbitration award in 1985 existed in a period of monetary restraint in this province following which period however, the parties were able to conclude voluntary agreements until this subsequent period of restraint imposed by the present government for public employees.

This Board does not have the legislative authority or direction to impose on these parties the provincial wage guidelines represented by the transfer payment schedule to this Employer and other agencies of the government. This Board is required under the terms of the Act as it exists in the period of this collective agreement, to consider all of the factors set out therein in broad terms which includes as we have noted, any relevant economic factors but the Board is not in any way restricted nor should it be in relation to the requirements of the Act, by internal directions from the government Ministries to the Employer. To do so would strip the collective bargaining process under the Act of any real meaning which if intended can be achieved only through legislation.

Apart from that however, the Board has considered the economic data provided by the Employer which has a serious effect on its operational budget both with regard to the revenue obtained from transfer payments and from ridership, both of which are controlling factors in the method and extent of its operations. Nonetheless it is an essential service in this province and for which the employees involved must be appropriately compensated having been excluded from open collective bargaining. In consideration of all of these factors the Board has attempted to give effect to what it considers would have been achieved outside of the constraints of the Act for the employees in this bargaining unit. Any increase to labour costs by wages and benefits to employees will have a negative effect on the Employer's budget. The issue is the extent of that adverse effect which should be applied for the term of this collective agreement. Clearly the service provided by the Employer to the public must be continued and equally clear, there must be employees to operate and service the equipment to provide the public transport facilities as required of the Employer by the Government. Any assumptions as to what the Provincial Government would impose or approve as a financial plan for the Go Transit system is not within this Board's jurisdiction or indeed ability to determine and is at best speculative. The Board is required to apply objective criteria in establishing fair and reasonable terms and conditions of employment for these employees pursuant to the Act.

Labour costs are relevant to consider in any dispute whether in a period of restraint or not and includes not only increases to wages but also to benefits and other employment terms applicable during the period of the collective agreement. It is this Board's opinion that the emphasis which would reasonably be placed by the parties in negotiations for the renewal of this collective agreement at that time would be on increases to the wage rates in relation to the parity position of the Union with TTC wage rates. As the Board has found that this is the appropriate comparable group, we have concluded that increases to the classification rates should be given priority to increases in benefits which are also apart of cost in its determination of appropriate total compensation in this agreement. In so doing we reject the Union's proposal to catch up during the term of this agreement by awarding an amount of increase to provide exact equality with the TTC Operator and Mechanic rates. That cost cannot be justified in the circumstances of this dispute. What can be considered however, is the amount of increase which was applied to the TTC employees in their last agreement which covers the period of two years from July 1, 1991 to June 30th, 1993, six months prior to the expiry of this collective agreement.

The essential position of the Employer is its inability to pay wage increases beyond the government transfer payments which constitutes its offer to the Union on this issue. The ability to pay labour costs of an Employer in interest disputes has been considered and dealt with by various arbitrators over the years who in the main, have rejected its application based on a number of factors which include in the public sector, that the government involved cannot be allowed to avoid increases to wages properly indicated by the other criteria such as specifically referred to in the Act. In the B.C. Railway award, Arbitrator Shime said,

> "public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions. . . On balance the total community which requires the service should shoulder the financial loss and not expect the employees of the industry to bear an unfair burden by accepting wages and working conditions which are substandard. . .
>
> There is no proof that arbitration awards are capable of aggravating a rising cost of living and there is sufficient evidence that the necessity to adjust wages as a result of rather than the cause of increased living costs. Thus most arbitrators have given consideration to this factor as a response to the economy and have adopted the position that a particular arbitration involving a limited number of employees is not the place to regulate the national or provincial economy. The arbitration process as an institution is not equipped to be a regulator of the economy. That function is properly the role of Parliament or the Legislature adopting necessary fiscal or monetary policies."

In Re Board of Governors of Ryerson Polytechnical Institute and Ryerson Faculty Association, 4 L.A.C. (2d) 9 (H.D. Brown) it was stated at page 15:

> "The Government which supplies the greatest part of the income for this institution cannot expect it to continue at a loss and to hold that out as a barrier to justifiable increases for the employees of the Institution. While the ability to pay is a factor to be considered in any situtations, it does not have the same force or effect in public institutions and is not a proper basis to restrict an arbitration which must be made on objective facts."

The Chairman has not been persuaded since that award was released that the above statement is not applicable in present circumstances. Mr. Teplitsky indicated in 1978 that,

> "the ability of the Employer to pay in a public sector dispute is irrelevant. . ."

and in 1981, Arbitrator Christie stated,

> "interest arbitrators in the Canadian Public sector have apparently universally rejected the legitimacy of an ability to pay argument. They have not allowed governments as Employers to hide behind their own skirts in their roles as the source of funds to escape pay increases indicated by the other criteria."

Similarly, in Arbitrator Swan's decision in Re Kingston General Hospital and OPSEU, June 12, 1979, it was stated:

> "Public Sector arbitrators have never paid much attention to arguments based upon the ability to pay of the public purse not because they do not think that the public purse needs to be protected from excessive wage demands, but because the other factors which fashion the outcome of an arbitration are so much more influential and so much more trustworthy than the notional constraints of ability to pay."

In Parry Sound District General Hospital (1987) Arbitrator Samuels stated:

> "In the public sector almost invariably arbitrators have not accepted the argument of inability to pay because this is an artificial argument. . . but in the public sector generally suggestion of inability to pay has nothing to do with lack of income. Rather it is the result of an arbitrary decision by politicians or bureaucrats that there will simply be no more funding for these employees. Over and over again arbitrators have said that the public sector employees ought not to be required to subsidize a public service by accepting substandard wages. . ."

With regard to the application of legislation in force in 1983 that required arbitrators to consider an Employer's ability to pay "in the light of existing provincial fiscal policy", a number of arbitration awards dealt with that concept in which it was found not to be a mandatory provision and not the only criteria to be considered by the Board under that legislation. In that regard Arbitrator Kates stated in 1984:

> ". . . the Board views its obligation in reaching a conclusion with respect to wages to consider the Employer's ability to pay and the province's stated guideline of limiting wage increases to 5% in a balance perspective with the equally important criteria contained in Section 12(2) of the Crown Employees Collective Bargaining Act, 1980. We do not accept that the Employer's ability to pay should be given greater emphasis in the light of these other relevant factors in reaching a wage award. The ability to pay factor in our opinion may only be treated as an overriding consideration in relation to other relevant factors if the evidence supports that notion."

There is no legislation in place which would have affected the parties negotiations as to the conditions of employment during the term of this collective agreement with regard to a restraint of wages thus, as indicated above, the Board is obliged to carry out its assessment of the dispute in accordance with the criteria in Section 12(2) of the Act. In doing so, economic factors which apply to the consideration of wage increases for this group of employees are relevant and must as we have done, be taken into account in the assessment of all of the objective factors but the Employer's ability to pay submission based as it is on government policy cannot by this Board be given primacy in assessing all of these factors for the reasons which have been consistently given by Arbitrators in public sector disputes as indicated above. The ability to pay appropriate wage increases in this type of interest dispute is not a controlling factor but the Board must consider relevant economic data with regard to the Employer's operations in its interest to replicate the results of free collective bargaining.

We find the relevant factors which have generally been considered in these disputes include the cost of living-inflation is less than 2% in 1992; unemployment in Canada stands at over 11%; contract settlements in the public and private sector-3% or less in 1992; ridership decrease in the system in 1992, that has resulted in a reduction of income for the Employer from this source with no indication of any substantial improvement during the term of this collective agreement. A pay equity plan was established and effective on December 20th, 1991 on which base additional wage increases will add to the Employer's budget deficit in operations. The wages of other employees of Go Transit have been restrained and those of senior ranks frozen.

Other relevant factors are the comparisons to those employed in similar services which as found above requires a direct comparison with employees at the TTC. Reference was also made to the settlement of the Ontario Public Service Employees contract for 1992-93 with wage increases of 1 and 2%. We note that the wage increase cost of COLA and benefits impacted on the actual payroll cost to the Government in that settlement. As well, that settlement was conditioned with job security measures for that bargaining unit. Further, we find that such agreement applied to a group of employees which are not comparable this bargaining unit with regard to qualifications and work performed. In our opinion that settlement is not directly applicable in the circumstances of the present matter.

The operator rate at the TTC as of December 20th, 1991 was $19.25. The Group 10 mechanic rate was $22.47. The rates at Go Transit are $17.96 and $20.25 respectively (after application of the job evaluation plan). The differential in the operators rate on the rate in the collective agreement is $1.41 which the Union seeks to obtain in full. In 1992 the TTC rates increased to $20.16 and $23.54 in these classifications.

Having regard to the foregoing, it is our conclusion that it is not a realistic bargaining expectation to achieve exact parity with the TTC wage rates in these and other classifications during the term of this collective agreement. All of the negative factors referred to were in general in place at the time of these negotiations and could be projected for both years of the agreement. This adverse climate for collective bargaining has had a dampening effect on wage increase demands with the minimal increases as set out in the statistics presented to this Board. While fiscal restraint submissions regularly appear in public sector disputes, in other and more favourable economic conditions in this province the goals of the bargaining unit based on the comparison which we found it to be appropriate could be supported in time. Nonetheless having regard to the voluntary settlement reached at the TTC for the first year of its contract extending to June 1992 and having regard to the negotiations between these parties at that time, it is reasonable in our view to apply the same increase applied to the TTC bargaining unit to these employees which would maintain the same differential of wages between the two groups of employees as at the commencement date of this agreement.

The same consideration however, cannot be applied in the second year of this agreement as the factors to be considered by the Board for 1993 (this agreement extends six months past the expiry of the TTC agreement on June 30th, 1993) are such that the maintenance of the same wage differential cannot be justified on the economic data relevant to this Employer for that year. At best, the employees in the bargaining unit could expect to cover inflation costs in order to maintain the wage levels obtained in the first year of the agreement. It is unrealistic in our opinion to apply the total settlement at the TTC made in July 1991 when at the time of expiry of the prior agreement conditions for this Employer had changed for the worse with forecasts of decreasing economic activity in the province in the following two years. At the time of the hearing, the Board was presented with statistics which supported that concern which has been reflected in decreasing revenue both for the TTC and Go Transit and other public transportation systems. We have also considered the changes to the benefits as awarded and other improvements in the collective agreement negotiated directly by the parties in considering the total amount of compensation to be applied.

Having carefully considered all of these matters, it is the Board's award that there shall be a wage increase across the Board of 4.95% effective as and from December 21, 1991 to all classifications and ranges within the classifications.

The Board further awards that there shall be a wage increase across the Board of 2.5% effective as and from December 21st, 1992 to the rates then in effect in all classifications and ranges within the classifications.

2 - VACATIONS - ARTICLE 32

The present Article provides vacation on a scale of vacation credits up to eight years after which he is entitled to annual vacation of four weeks and five weeks on sixteen years of continuous service. The Union proposed an amendment to provide vacation entitlement of three weeks after one, four weeks after six, five weeks after fourteen and six after twenty. The Union submitted that under the present agreement the employee does not receive the express number of weeks until the second year following the year in which his years of service entitle him to the increased week of vacation and requests vacation equivalent to the year of the anniversary date of employment.

The Employer proposed that there should be no change to the present Article.

Having considered the submissions the Board awards that there shall be no change to the present provisions of Article 32.3 which shall be continued in effect for this collective agreement.

3 - SHIFT PREMIUM - ARTICLE 36

The present provision is a shift premium of $5.25 for each shift worked between 2201 and 0815 hours. The Union proposed an increase to $6.00. The Employer submitted that there should be no change to the present provision.

The Board awards that the shift premium of $5.25 shall remain in effect for the term of this agreement.

4 - SUNDAY PREMIUM - ARTICLE 36.2

The present provision provides for a flat rate premium for shifts worked on Sundays at the present rate of $12.00. The Union requested an increase of this premium to $16.00. The Employer proposed that there be no change.

Having regard to the comparators on this issue, we find that the present premium is substantially less than paid in other transit systems including the TTC in which operators are paid 1 1/4 times basic rate for up to ten hours and 1 1/2 times for excess time. Operators at Mississauga Transit are paid effective October 1, 1991 $4.54 an hour in addition to their regular hourly rate.

In our opinion the Union's request is supported by this material and therefore it is our award that effective December 21, 1992 the Sunday premium shall be increased to $16.00.

5 - SPREAD-SPLIT PREMIUM - ARTICLE 36.3

The present Article provides for a premium for each completed shift that results in an elongated work day caused by scheduling split shifts for a spread of 11 hours or more in duration at $12.00. The Union requests this premium be increased to $16.00 and paid after 10 hours. The Employer proposed that there should be no change to the present provision.

Having regard to the submissions of the parties on this issue the Board awards that effective December 21, 1992 Article 36.3 shall be amended to provide a premium of $16.00 after 11 hours.

6 - RETROACTIVITY

The Board awards that Article 39.2 of the collective agreement shall be amended to provide as follows:

> An employee as of December 21, 1991 who has since left his employment for any reason shall be informed by the Employer in writing with a copy to the Union within fifteen days from the effective signing date of their right to claim the increase to the wage rates on a pro rata basis from and including December 21, 1991 to the date of their termination. Such employees will have thirty days only from the date the notice is mailed to them to claim the retroactive wage adjustment only following which such claims shall be deemed to have been abandoned. Such notices shall be mailed to the employees' last known address in the records of the Employer.

The Board directs the parties to prepare and enter into a collective agreement incorporating those items which have been directly settled between the parties together with the unamended terms of the prior collective agreement and the terms of this award within four weeks from the date of the release of the award to the parties.

DATED AT OAKVILLE, THIS 31st DAY OF DECEMBER, 1992.

HOWARD D. BROWN, CHAIRMAN

dissent

AL CORMIER, EMPLOYER NOMINEE

Wally Majesky

WALLY MAJESKY, UNION NOMINEE

Addendum

I concur with the Board's decision, but I would like to comment on the Award. Clearly the Board accepts the concept of parity with the TTC and I think that this is a very important precedent. I say this with the knowledge that the majority of the Board does not buy the argument that exact parity is applicable in the second year of the GO Transit collective agreement. Moreover, the majority of the Board accepts the argument that these are especially tough times and that GO Transit budget is being impacted by declining ridership and tough budgeting restraint by the provincial government.

I for one, do not "buy" GO Transit's argument, not because there is a supposed declining ridership and tough budgetary restraints via provincial subsidies. I do not buy the argument and/or concept of GO Transit's rolling stock being sold, and then leased back, with the supposed savings going to the government, as opposed to it being applied to GO Transit's operating budget.

In essence, I disagree with the 2.5% increase in the second year of the collective agreement because I think it, once again, puts the GO Transit workers slightly behind their TTC counterparts. Considering that the TTC collective agreement comes due in July 1st of 1993, this will even widen (further) the gap between the TTC and GO Transit.

Secondly, the Board clearly rejects the "ability to pay" argument, when it is framed within the context that "ability to pay", is tied to government policy. I guess that if future economic conditions improve for GO Transit, then the argument for exact parity with the TTC should then become the bench mark for any future negotiations, or any future Interest arbitrations.

On balance, the award tries to deal with the issues in a fair and equitable manner. On this point, I commend the Board and in particular, the chairperson, in coming up with a settlement. Although it falls short of some of the union's demands, on balance, is far better than most public sector settlements.

I dissent from the terms of this award for the following reasons:

1. The Employer provided the Board with ample evidence that factors used to compare the relationship between GO Transit employees and those of the Toronto Transit Commission had altered significantly since the 1985 award which concluded that parity between these two employers was reasonable. With only one third of GO Transit operators living and reporting to work in the Metropolitan Toronto area, parity with TTC is no longer justifiable. Relative to other transit employers in the GO Transit service area, the GO Transit Operators are not underpaid.

2. In his award, the Chairman acknowledges that the Board is required to consider the relevant economic data with regard to the Employer's operations. In its submission to the Board, the Employer made it abundantly clear that GO Transit, as the employer, and the Province of Ontario, are one and the same and that its financial capabilities and those of the Province are in dire straights. Yet the Board decided to award the same salary increase awarded to TTC Operators in 1991, knowing full well that the economic circumstances of the Province have changed drastically between 1991 and late 1992.

   Such an award displays complete disregard to the 1992 requests of the Provincial Government with respect to the curtailment of expenses by its agencies. The award also quotes parts of other judgements in public sector employers. It appears that other arbitrators also feel that the arbitration process is not equipped to be a regulator of the economy. While this may also be 'technically' correct, I feel the arbitrators have a higher obligation to consider the overall ability of society at large to pay for public sector salary increases completely out of context with the economic times faced at the time of the award.

3. Finally, I view the actions of the Provincial Government in its attempts to control expenses in the public sector as inconsistent in the past two years. While on the one hand it is freezing salaries and other discretionary expenses, it has not indicated that these constraints should also be reflected in the collective bargaining and labour arbitration process. In so doing, it places its agencies in the impossible situation of having to manage with reduced budgets while, at the same time, having to go through collective bargaining and arbitration processes which are totally divorced from economic reality. This is not consistent and effective leadership.

A. Cormier
Employer Nominee

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T/0092/91

IN THE MATTER OF AN ARBITRATION

Under

THE CROWN EMPLOYEES COLLECTIVE BARGAINING ACT

Before

THE LABOUR RELATIONS TRIBUNAL

Between:

OPSEU (Utility Plant Electrician)

Applicant

- and -

the Crown in Right of Ontario
(Ministry of the Environment)

Respondent

BEFORE:	N. Dissanayake	Vice-Chairperson
	L. Robbins	Member
	F. Collict	Member

FOR THE UNION:

B. Mayes
Research Officer
Ontario Public Service Employees Union

FOR THE EMPLOYER:

L. Barber
Staff Relations Officer
Management Board of Cabinet

HEARING: March 25, 1993

DECISION

This Board of Arbitration was constituted pursuant to article 5.8.1 of the collective agreement between the parties, which reads:

> 5.8.1 When a new classification is to be created or an existing classification is to be revised, at the request of either party the parties shall meet within thirty (30) days to negotiate the salary range for the new or revised classification, provided that should no agreement be reached between the parties, then the employer will set the salary range for the new or revised classification subject to the right of the parties to have the rate determined by arbitration.

The wage dispute relates to the position of Electrical Maintenance Technician at the Lakeview Water Pollution Control Plant in Mississauga, Ontario a sewage treatment plant. These positions were formerly classified in the Maintenance Services Category as Maintenance Electrician. That class standard is attached to this award as exhibit "A". In December, 1986, a number of incumbents grieved, alleging that their positions were improperly classified. The Grievance Settlement Board conducted hearings in October 1990 and issued its award on March 5, 1991. The Board upheld the grievances and concluded that the positions were improperly classified. By way of remedy the Board issued a "Berry order", requiring that the positions be properly classified. [See, Re Cardno et al, 530/88 (Stewart)].

Following the award of the Grievance Settlement Board, through discussion between the parties a new class standard for the positions in question was created. This standard for the new classification of Utility Plant Electrician (UPE) was approved by the Civil Service Commission on May 30, 1991. That class standard is attached to this award as exhibit "B". Subsequently the parties met on several days to negotiate a wage rate for the new classification, but were unsuccessful in reaching an agreement. As a result, pursuant to article 5.8.1 the wage dispute was referred to this Board. The parties agreed that the Board had jurisdiction to establish a wage rate for the UPE classification.

The incumbents are currently paid at the wage rates applicable to the Maintenance Electrician classification which the Grievance Settlement Board has determined is an improper classification. The two step 1991 salary grid for Maintenance Electrician is 17.86 per hour and 18.29 per hour. Both parties filed extensive briefs in support of their respective positions as to the wage rate that should apply to the new classification. Additional oral submissions were made by each party at the hearing.

The union submits that upon a comparison of the old Maintenance Electrician class standard and the new UPE class standard, there are significant differences. It is the union's position that the UPE class standard requires a higher level of skill; that it contemplates more independence for the incumbents in carrying out their duties; that it requires working with computers, which was not mentioned in the Maintenance Electrician class standard; that the UPE standard recognizes a preventative maintenance role; and most importantly that the UPE standard includes design and modification duties, which were not recognized by the former class standard.

The union submits that all of these are factors which warrant recognition through increased remuneration. The board was referred to a number of classifications within the Ontario Public Service, which the union claims are useful as comparators in determining the wage rate for the UPE classification. The union relied on the wage rates applicable to Thermal Operator Levels 1 to 4, and Utility Plant Instrument Technician (UPIT). In addition to the internal Ontario Public Service comparators, the union cited to the Board numerous proposed comparators in the quasi-public sector and the private sector.

The union recommends a wage increase for the UPE classification as follows. It urges the Board to follow its external comparators. Based on an average of the wage rates paid to those external comparators, the union seeks a two-step grid with a maximum hourly rate of $ 23.00, which represents an increase of 25.8 percent in the hourly wage rate. In the alternative, the union urges the Board to use as comparators, the Thermal Operator 3 and 4 and UPIT classifications in the Ontario Public Service. Based on those wage rates, the union seeks a two-step grid with a maximum of $ 21.03, which represents an increase of 14.98 percent at the maximum rate.

The employer takes the position that it is inappropriate for the Board to consider wage rates outside the Ontario Public Service as comparators. It put forward a number of positions in the Ontario Public Service as potential comparators, including Communications Technician 2, Electronics Technician and Maintenance Machinist. The employer points out that in the Re Cardno decision the Grievance Settlement Board found the former standard to be deficient only in the area of the grievors' design and modification duties. Based on the comparators it relied on, the employer suggests that there is limited rationale for adjusting the wage rates for the UPE class. If the Board determines that a wage increase is warranted, the employer recommends that the UPE classification be granted parity with the highest paid comparator proposed by the employer, i.e. Electronics Technicians. This would result in a wage increase for the UPE classification of 1.6 percent. The two step salary grid effective May 30, 1991 will then be $ 18.16 and $ 18.59 per hour.

In order to establish an appropriate wage rate for the UPE classification, it is necessary to compare that class standard with the old class standard of Maintenance electrician to see what, if any, significant differences exist in job content. In so doing, it is also necessary to have regard to the Grievance Settlement Board decision in Re Cardno (supra), because the fact is that the UPE class standard was established in order to implement that decision. The UPE class standard was the remedy designed by the employer to correct the shortcomings of the old standard as found by the Grievance Settlement Board. Also in comparing the class standards, we must only be concerned with real and substantial differences in the job content. It must be noted that the old class standard was last revised in 1967. The new UPE class standard is dated May 30, 1991. Thus the new class standard will necessarily have different language and terminology to describe the duties and responsibilities. In our view that difference in language and terminology by itself does not indicate a need for increased compensation where the duties and responsibilities and the skill and ability remain essentially unchanged. In other words, what is compensable is the changes in the job content itself, not the change in the language used to describe it.

We agree with the employer that the external comparators used in this case are not of any assistance to us. We had very little evidence as to these classifications. There will necessarily be numerous variables about which we have no information.

From among the internal comparators referred to by the parties we find that the one that is most attractive is the UPIT classification. In Re Cardno, the union relied on a number of aspects of the grievor's job as falling outside the Maintenance

Electrician class standard. The Board concluded that "the diagnostic and trouble shooting duties of the grievors and the fact that there is some independence afforded to them in the way that they carry out their work are responsibilities that are contemplated by the class standard". (pp.9-10). It was also held that the "the fact that the industrial electrician trade has been certified does not advance the position of the union" that the positions are improperly classified. (p.10). Nor did the Board accept the union's argument that "the particular work environment is not contemplated by the class standard". The Board also held that "the involvement of the grievors in matters such as the ordering of supplies and contacts with outside contractors are not significant aspects of the duties of the grievors and in our view do not fall outside the range of duties contemplated by the class standard". However, the Board upheld the grievance because it concluded "... we accept the union's submission that there is a significant aspect of the duties of the grievors which is not contemplated by the class standard".

This aspect of the grievor's work falling outside the Maintenance Electrician class standard is discussed by the Grievance Settlement Board in the following passage at p.9:

> We are compelled to agree with Mr. Coleman's submission that the facts of this case are similar to those in Beach, 816/86, where the evidence established that the grievor, an instrument technician, spent five to ten per cent of his time in the design and modification of existing equipment. In that case, the Class Standard referred to "installation, adjustment, repair and

> maintenance of electronic devices". At p. 1 of that decision the Board stated that this description:
>
> > ...implies a more basic application of skills [than] to design and modify a piece of equipment. In essence, the Class Standard duties are typical of skilled journeyman duties, while the added creative elements of design and modification put the grievor more into a designer or technologist type of category.
>
> It is our view that the same reasoning is applicable in the case at hand. There was some confusion in the evidence as to the total amount of time spent by the grievors on work entailing design and modification however the evidence is clear that the grievors spend at least 10% of their time engaged in this kind of work. This work is clearly a significant element of the duties of the grievor and is one which is not recognized in their current classification.

As in Re Beach, in Re Cardno the Board found that the grievors initiated work projects and that there clearly was "a design aspect of these projects".

A reading of the Cardno decision indicates two things. Firstly, the basis for the Board's finding that the positions of the grievors were improperly classified was the design and modification aspect of the grievors' work which occupied at least 10% of the grievors' work time. Secondly, the Board concluded that with regard to that aspect of the grievors' work, the facts in Re Cardno were similar to those in Re Beach.

In Re Beach, 816/86 (Fisher) the Grievance Settlement Board concluded that the position of the grievor there was improperly classified as an Electronics Technician and directed that the position be properly classified. It was pursuant to this direction that the employer established the UPIT class standard. Subsequently the parties attempted unsuccessfully to negotiate a wage rate for the newly created class standard. As a result, the wage dispute was referred for determination by the Ontario Public Service Labour Relations Tribunal pursuant to article 5.8.1 of the collective agreement.

In the decision [Re Beach, T0009/91 (Saltman)] at pp.2-3 the Tribunal reviews the significant duties found by the Grievance Settlement Board to be not covered in the old class standard. These are (1) The design and modification of existing equipment (2) Purchasing functions and (3) External contacts. At pp. 4-5, the Tribunal reviews the changes implemented in the new UPIT class standard to capture these duties and responsibilities and the resulting changes in the skills and knowledge requirements set out in the UPIT class standard. In consideration of the significant duties encompassed in the new class standard which were not covered in the old standard, the Tribunal awarded a salary rate which represented an increase of approximately 13 percent at the maximum hourly rate.

As noted, in Re Cardno, while the union argued that a number of duties and responsibilities performed by the grievors fell outside the ambit of the class standard, the Board disagreed except with regard to their design and modification duties. In other words, the Board found the positions to be improperly classified solely on the basis of those design and modification duties. The Board in Re Cardno concluded that with regard to this aspect the facts were similar to those in Re Beach.

Turning to the newly created UPE class standard, we see that it has been expanded to cover those design and modification duties, which the Grievance Settlement Board had held were not covered by the old Maintenance Electrician class standard. Thus the class definition section of the class standard explicitly refers to "... design/modification ... of electrical/electronic/mechanical heavy-duty process equipment, general power and lighting systems." Under "typical duties" explicit reference is made to "... modifying/designing electrical components, equipment, parts and minor systems". It also provides that the incumbents "may also work on computers, programmable logic controllers, AC and DC drives and other sophisticated, automated and non-automated equipment." In the "Skills and Knowledge" section, reference is made to a "thorough knowledge of ... electronic principles and familiarity with computer applications as related to utility plant operations".

In comparing the classification grievance decisions of the Grievance Settlement Board in Re Beach and Re Cardno, it is apparent that in the former, the Board found three significant aspects of the grievors' duties to be outside the existing class standard. In the article 5.8.1 decision, the Saltman Board found that the new UPIT class standard included those duties. Therefore there was a need to set a wage rate by awarding an increase to reflect those additional duties. In contrast, in this case the only area found by the Grievance Settlement Board in Re Cardno to be outside the old class standard was the design/modification duties. On a review of the new class standard, we cannot find any significant and substantive difference other than in that aspect which would warrant additional compensation. Therefore, in establishing a wage rate we must attempt to reflect the inclusion of the design/modification duties in the new class standard.

In reviewing the Saltman decision, we find that while the Board there was attempting to set wage rates taking into account three additional areas, the design/modification duties were considered by far to be the most significant of the three areas. That is the very aspect that has been included in the UPE class standard and must be compensated for in setting a wage rate for the classification. While in Re Beach the Board found that the incumbents performed design/modification duties 5 to 10 percent of their work time, in Re Cardno the grievors were found to perform similar duties "at least" for 10 percent of their time.

Considering all of the circumstances, the Board awards a wage grid of $ 19.29 per hour at the first level of the grid and $ 19.75 per hour at the maximum level for the UPE classification. This wage grid will be effective from May 30, 1991, the date of approval of the new class standard by the Civil Service Commission.

The Board shall remain seized in the event that difficulties arise in he implementation of this award.

Dated this 18th day of May, 1993 at Hamilton, Ontario

Nimal V. Dissanayake
Chairperson

"Concurring"
Larry Robbins
Union Nominee

"concurring with addendum"
Fred Collict
Employer Nominee

ADDENDUM

RE: UTILITY PLANT ELECTRICIAN

This Member is basically in agreement with this award.

The award, after detailed analysis by the Chair, is based essentially upon the following finding"

> "On a review of the new class standard, we cannot find any significant and substantive difference other than in that aspect (**ie. design/modification duties**) which would warrant additional compensation. Therefore, in establishing a wage rate we must attempt to reflect the inclusion of **the design/modification duties** in the new class standard."
>
> (bracketed reference and underscoring/emphasis added - page 11 of award)

This Member is in agreement with this finding; but is of the opinion that the design/modification duties performed by Utility Plant Electricians are **qualified**; and are **not** quite so all-inclusive and expansive as in **Re Beach**. Such a qualification is not referred to in **Re Beach** where, in fact, it was stated that the **"creative elements of design and modification put the Grievor more into a designer or technologist type of category"**

By contrast, in **Re Cardno**, the following is stated with reference to Mr. Cardno's design and modification duties:

> "in cross examination Mr. Cardno acknowledged the involvement of **the shift engineer, his supervisor and other employees such as the Instrument Technicians** in these projects."
>
> (underscoring/emphasis added - page 6 of GSB #530/88, etc. Cardno et al)

This **qualification** is significant for, although the electricians would initiate design projects, it is clear that their involvement, predicated upon the above testimony, would not put them "into a designer or technologist type of category," as set out in **Re Beach**. Essentially, the analogy may not be perfect. However, it is clear that the Utility plant Electricians receive a very substantial amount of assistance and guidance in their **"design/modification" duties**.

Notwithstanding the above, this Member concurs with this award.

F. T. Collict
F. T. COLLICT
May 13/93